

No.

In the Supreme Court of the United States

SPRINGFIELD R-12 SCHOOL DISTRICT; BOARD OF
EDUCATION OF THE SPRINGFIELD R-12 SCHOOL
DISTRICT; GRENITA LATHAN; YVANIA GARCIA-
PUSATERI; AND LAWRENCE ANDERSON, PETITIONERS,

v.

BROOKE HENDERSON AND JENNIFER LUMLEY

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court has held that a threatened injury must be “certainly impending” to satisfy Article III’s injury-in-fact requirement, expressly rejecting a more forgiving “objectively reasonable likelihood” standard. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 401, 410 (2013). The courts of appeals are divided over whether the demanding “certainly impending” standard, or the more forgiving objective-reasonableness standard *Clapper* rejected, governs First Amendment claims of “chilled” or “compelled” speech.

The question presented is:

Whether a plaintiff alleging chilled or compelled speech establishes Article III injury-in-fact by showing that her self-censorship or compliance was “objectively reasonable,” or whether, consistent with *Clapper*, the plaintiff must show that a threatened governmental consequence was “certainly impending.”

PARTIES TO THE PROCEEDING

Petitioners Springfield R-12 School District, Board of Education of the Springfield R-12 School District, Grenita Lathan, Yvania Garcia-Pusateri, and Lawrence Anderson were Defendants-Appellees below.

Respondents Brooke Henderson and Jennifer Lumley were Plaintiffs-Appellants below.

Martha Doenning was a Defendant below.

RELATED PROCEEDINGS

U.S. District Court for the Western District of Missouri
(W.D. Mo.):

Henderson v. Springfield R-12 Sch. Dist., No. 6:21-cv-3219 (Jan. 12, 2023) (order granting motion for summary judgment)

Henderson v. Springfield R-12 Sch. Dist., No. 6:21-cv-3219 (Mar. 31, 2023) (order awarding attorney's fees)

Henderson v. Springfield R-12 Sch. Dist., No. 6:21-cv-3219 (Apr. 3, 2023) (judgment)

U.S. Court of Appeals for the Eighth Circuit (8th Cir.):

Henderson v. Springfield R-12 Sch. Dist., Nos. 23-1374, 23-1880 (Sept. 13, 2024) (original opinion affirming the district court's grant of summary judgment and vacating award of attorney's fees)

Henderson v. Springfield R-12 Sch. Dist., Nos. 23-1374, 23-1880 (Nov. 27, 2024) (order granting rehearing en banc)

Henderson v. Springfield R-12 Sch. Dist., Nos. 23-1374, 23-1880 (Dec. 30, 2025) (en banc) (opinion vacating, reversing, and remanding to the district court)

Henderson v. Springfield R-12 Sch. Dist., Nos. 23-1374, 23-1880 (Mar. 2, 2026) (order denying rehearing en banc)

Supreme Court of the United States:

Springfield R-12 Sch. Dist. v. Henderson, No. 25A1271 (May 18, 2026) (granting application for extension of time to file petition for a writ of certiorari)

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PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the en banc court of appeals (App. 1a-39a) is reported at 163 F.4th 478. The vacated panel opinion (App. 74a-88a) is reported at 116 F.4th 804. The order of the en banc court denying rehearing (App. 89a-90a) is unreported, but available at 2026 WL 570154. The opinion of the district court granting petitioners summary judgment (App. 40a-68a) is reported at 650 F. Supp. 3d 786. The opinion of the district court awarding attorney's fees (App. 69a-73a) is unreported, but available at 2023 WL 3022517.

JURISDICTION

The judgment of the en banc court of appeals was entered on December 30, 2025. The petition for rehearing en banc was denied on March 2, 2026. On May 19, 2026, Justice Kavanaugh extended the time within which to file a petition for a writ of certiorari to and including July 30, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The First Amendment to the Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

INTRODUCTION

Public employers cannot run schools, police departments, or any other agency without training their employees in their policies—and employees will not always agree with what they are taught. This case asks

whether such disagreement confers standing for a federal lawsuit. Respondents are employees of the Springfield, Missouri R-12 School District who attended a mandatory workplace training and expressed their views, including views with which some trainers and coworkers disagreed. Respondents suffered no consequences as a result. Neither was disciplined. Neither lost a dollar of pay or a moment of professional-development credit. One was promoted. Yet, the en banc Eighth Circuit held, by a one-vote margin, that because respondents would have liked to say more and objected to being required to show they understood Springfield's policies, they suffered an injury sufficient to invoke the jurisdiction of the federal courts.

This Court's review is necessary to resolve a conflict over the standard for determining injury-in-fact for "chilled" and "compelled" speech claims. The question that divided the en banc Eighth Circuit 6-5 is simple: When does a public employer's mandatory workplace training inflict First Amendment injuries on employees who disagree with the content of their employer's policy? The majority below held that respondents established injuries because they had an "objectively reasonable fear of negative consequences" for expressing their contrary views, App. 14a, that was not "wholly subjective" or "minimal," App. 22a-23a. As Chief Judge Colloton put it in his dissent, the majority thus opened the door for any employee who believes a policy is "inappropriate, misguided, or offensive" to "make a federal case out of it." App. 27a-28a.

The decision below reflects the "lamentable" "lack of clarity" in First Amendment standing law. Alex Chemerinsky & Erwin Chemerinsky, *Chill*, 104 Tex. L. Rev. 439, 482 (2026). In *Clapper v. Amnesty International USA*, 568 U.S. 398 (2013), this Court held that a "threatened injury must be certainly impending" to confer standing, rejecting the "objectively reasonable

likelihood’ standard” as “inconsistent with” Article III. *Id.* at 401, 410. But in a footnote, the Court acknowledged that it has sometimes found standing based on a “substantial risk” that harm will occur, while leaving for another day whether that standard is “relevant” or “distinct from” the “certainly impending” requirement. *Id.* at 414 n.5. The next Term, *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014), repeated those two standards in the alternative and asked whether the plaintiff alleging chill had faced a “credible threat of enforcement.” *Id.* at 158-159. This Court has never explained how those formulations relate.

Absent clear guidance, the courts of appeals have supplied conflicting answers. For “chill” claims, the First, Fifth, and Sixth Circuits follow *Clapper* and require that a future consequence be “certainly impending” before a plaintiff may establish standing based on self-censorship. By contrast, the Seventh, Tenth, and Eleventh Circuits—joined by the Eighth Circuit below—apply a version of the test *Clapper* rejected, permitting a case to proceed whenever the court considers it “objectively reasonable” for the plaintiff to have self-censored. Another group of circuits, including the Third and Fourth, have cited the higher “certainly impending” *and* lower “objective reasonableness” standards, sometimes in the same opinion. Given the inconsistency, “it is generally hard to predict whether an allegation of chilled speech will be sufficient to establish justiciability.” Chemerinsky, *Chill*, *supra*, at 471.

“Compelled” speech standards are similarly unsettled. The Ninth and Eleventh Circuits require a threatened injury be “certainly impending,” while the Tenth Circuit—joined by the Eighth here—requires only that the threat of injury be “more than minimal” and not “wholly subjective.”

Courts and commentators have recognized the uncertainty and the need for this Court’s guidance. See, e.g., *id.* at 482 (“lack of clarity”); *id.* at 442, 443, 444, 482 (“inconsistent” case law); *id.* at 471 (no “workable doctrine”); *Blum v. Holder*, 744 F.3d 790, 798 (1st Cir. 2014) (uncertainty whether *Clapper* adopted a “more stringent injury standard”); Amanda McDowell, *The Impact of Clapper v. Amnesty International USA on the Doctrine of Fear-Based Standing*, 49 Ga. L. Rev. 247, 264 (2014) (noting courts’ uncertainty regarding “certainly impending” and “objectively reasonable” tests); Cameron W. Arnold, *Standing in the Line of Fire: Compulsory Campus Carry Laws and Hostile Speech Environments*, 49 Seton Hall L. Rev. 807, 830 (2019) (“ambiguity about the scope and applicability of the ‘certainly impending standard’”); *Standing—Challenges to Government Surveillance*, 127 Harv. L. Rev. 298, 304 (2013) (“troublingly imprecise” “oscillation between stricter and more relaxed [injury] standards”) (citation omitted).

The decision below deepens the confusion and undermines a bedrock tool of public administration. The problem extends far beyond this training or any one ideology: as Chief Judge Colloton explained, “[a]n employer who trains on any subject from any point of view” faces suit by an employee who disagrees and remains silent. App. 32a. The low standard embraced by some circuits “portends a host of litigation over public employee training” and “make[s] it impractical for public employers to test employees on their knowledge of organization policy without facing lawsuits for supposedly compelling employee speech.” App. 30a-31a. “[T]he floodgates are open.” App. 32a.

The Court should grant review and reverse.

STATEMENT

1. Like tens of thousands of public employers nationwide, the Springfield R-12 School District requires employees to attend periodic job-related training sessions. Examples of these trainings include programs on student discipline, child-abuse reporting, student-privacy regulations, youth suicide and mental-health awareness, sexual-harassment prevention, discrimination and bullying intervention, and active-shooter protocols.

In October 2020, the District required employees to attend a “Fall District-Wide Equity Training.” App. 4a. “Attendees were paid for their time and were eligible to receive professional-development credit for attending.” App. 77a. At the beginning of each session, the District’s trainers provided employees with “Guiding Principles” for the training, including “Stay Engaged,” “Speak YOUR Truth and from YOUR Lived Experiences,” and “Be Professional.” *Ibid.* Trainers encouraged employees to “have courageous conversations” and “stay engaged,” even though “the topics of the training can be uncomfortable.” App. 6a (quotation marks omitted). Trainers told employees that “it was part of [their] job duty” to abide by the principles taught during the training. *Ibid.* (alteration in original). The District’s chief equity and diversity officer explained that the training was “a *requirement* for staff to participate in which they are also *compensated* for.” App. 11a (emphasis in original). One slide in the presentation advised employees to “Be Professional—Or be Asked to Leave with No Credit.” App. 6a. No attendee was asked to leave, denied pay, or refused credit because of his or her conduct. App. 79a.

Respondent Brooke Henderson, a district employee responsible for coordinating accommodations for students with disabilities, attended the virtual training. App. 5a, 41a. The training included both a live session and

comprehension-check modules that employees could complete at any time. App. 8a-9a. During the live portion, Henderson expressed “her view that Kyle Rittenhouse was defending himself against rioters” during a Black Lives Matter protest in 2020. *Ibid.* The chief equity and diversity officer disagreed, saying that Henderson’s view was “wrong and confused.” App. 10a. No District employee commented further, and there is no allegation that District employees disciplined any participants because of their comments. Henderson chose not to further express her views, stating that she worried that “she would be corrected or considered unprofessional” and “feared” she would be “written up or terminated from her job.” App. 10a.

The session also included a “four corners” exercise, during which participants were asked to display a sign indicating whether they agreed/strongly agreed or disagreed/strongly disagreed with various prompts. No presenter told participants that any particular answer was required, and there is no allegation that participants who expressed disagreement were disciplined. Nevertheless, Henderson alleges that she always displayed the “agree” sign, regardless of her actual beliefs, stating that “she feared that if she disagreed, she would be asked to leave without receiving credit or pay.” App. 79a, 54a.

Certain employees, including Henderson, also had to complete online training modules concerning District policies and workplace expectations. App. 7a. To progress through the modules, Henderson had to confirm that she understood the District’s policies. App. 8a. For example, when Henderson chose one answer the District considered incorrect, the module stated that her answer was wrong, explaining the question asked not about “suggested guidance,” but rather about “required policy and job responsibility.” *Ibid.* Because Henderson was required to identify the District’s preferred answers to

proceed through the comprehension test, Henderson alleged “she was forced to accept the school district’s viewpoint” and “felt compelled” to speak “in a way that she disagreed with.” *Ibid.*

Another module included a “self-assessment checklist” that generated a “cultural competen[ce]” score. App. 9a. Henderson was required to complete the assessment, but there is no allegation that any District official told Henderson or others how to answer or that the District would review or assess answers. *Ibid.* Because “Henderson believed the assessment *might* be reviewed by the school district,” she alleged she “felt compelled” to provide answers that “were inconsistent with her views.” *Ibid.* (emphasis added).

Respondent Jennifer Lumley, a secretary, attended in-person training. App. 5a, 41a. During a small-group discussion following a video concerning George Floyd’s death, Lumley shared her view that “not all cops were bad” and “Floyd’s death was not a commentary on all law enforcement.” App. 10a. Another employee disagreed and “appeared upset.” *Ibid.* When that other employee later spoke during the larger group discussion, she “did not give voice to the views offered by Lumley.” *Ibid.* There is no allegation that any District official stated that employees’ answers would affect their credit or pay for the exercise. However, “[d]uring a subsequent interactive exercise, Lumley did not express her views that were at odds with [the other employee’s views] or the school district’s teachings out of concern about how her comments would be received by the school district.” *Ibid.*

Later, however, Lumley spoke again, saying that “she did not believe every white person is racist,” that people of other races could be racist, and she did not believe she is “privileged” because she was raised in poverty and worked hard to accomplish her goals. App. 10a. One of the trainers stated that “black people

can be prejudiced but not racist.” App. 11a. Lumley questioned that statement. *Ibid.* Other employees “raised their voices to disagree with Lumley,” and “trainers did not intervene.” *Ibid.* No District official indicated that comments like Lumley’s could result in discipline, removal, loss of compensation, or denial of credit. But based on her interactions, “Lumley ‘shut down’ out of fear and did not express her views again.” *Ibid.*

Both respondents “received credit and compensation for attending the training” and “suffered no adverse employment action arising out of their participation.” App. 42a. Both continued in their employment without incident. Lumley received a promotion soon afterwards. App. 28a.

District employees complained about the training. School board elections resulted in new board membership. The “equity” training was discontinued. App. 27a.

2. Respondents sued the District, seeking declaratory and injunctive relief and nominal damages. They alleged the District violated their First Amendment rights by discriminating against their viewpoints, chilling their speech, and compelling them to agree with the District’s views. App. 42a, 44a-45a. To establish standing, respondents argued “they suffered an injury-in-fact when” the district gave them three choices: “(1) say what [the District] wanted to hear by affirming anti-racism and equity; (2) refrain from speaking and risk being labeled white supremacists; or (3) speak out and risk losing professional development credit and pay.” App. 44a (citation omitted).

The district court granted summary judgment to the District, holding that respondents “lack[ed] the requisite injury-in-fact to show standing.” App. 40a, 51a. The court found “no evidence whatsoever” that the District “would subject [respondents] to any sort of negative

consequence” for their expressed views, and no “evidence [the District] even suggested to [respondents] or anyone else that undesirable consequences would flow from expression of certain views.” App. 53a. The same was true of the “four corners” exercise: the District “made no statements indicating participants would suffer negative consequences if they expressed disagreement with a prompt.” App. 54a. Indeed, “[d]espite claims of compulsion, [respondents] concede[d] they expressed their personal views during the training,” which “were at odds with [the District’s] views.” App. 47a. On each occasion, the court observed, District trainers disagreed but “took no further action.” App. 47a-48a. The court also noted that “there is no claim [respondents’] participation in the training program, or any opinion they expressed during the training program, has in any way impacted the compensation or benefits of their employment.” App. 42a. Accordingly, the court concluded that respondents’ fears about adverse consequences rested on “mere speculation,” their decision to self-censor was “not objectively reasonable,” and their alleged chill “constitute[d] a textbook example of the ‘subjective chill’ that lacks standing.” App. 55a.

Nor did respondent Henderson suffer injury by “answer[ing] online multiple-choice questions a certain way, though the credited responses reflected views at odds with [her] personal views.” App. 56a. Although Henderson was required to select the credited responses to complete the modules, the court concluded that the questions tested her understanding of the materials rather than demanding personal assent. App. 61a-63a. The court explained, “answering an online multiple-choice question does not suggest ‘affirmation of a belief and an attitude of mind,’” but only a “grasp” of the materials presented, and thus “reflects at most a belief about how

to identify the question’s credited response.” App. 62a-63a (citation omitted).

The court emphasized the “significan[ce] that [respondents’] action arises in an employment context,” noting that “employees are not free to disregard policy simply because of disagreement.” App. 64a. Because employees inevitably will hold differing views on controversial subjects, “it is the right and duty of the elected school board of the school district, acting by and through a school superintendent and administration, to determine a single, unified, districtwide approach to policy issues.” App. 66a. So long as that approach does not require unlawful conduct or compel employees, outside their official duties, to express specific objectionable words, “the employee is expected to comply.” *Ibid.* The training, after all, concerned the “policies applicable at work involving their employment.” *Ibid.* Ultimately, the court explained, it is “untenable” to claim that “the district should not conduct training for [the respondents] to attend on policies applicable at work involving their employment because they disagree with them * * * . Such a ruling would make administration of a governmental unit such as a large, urban school district wholly unworkable.” *Ibid.*

After further briefing, the court awarded the District attorney’s fees, finding respondents’ claims so “frivolous” and “groundless” that they “trivialized the important work of the federal judiciary.” App. 70a, 72a.

3. A panel of the Eighth Circuit unanimously affirmed, holding that respondents had not established injury-in-fact. App. 74a-88a. The panel agreed that “[n]o attendee was asked to leave, denied pay, or refused credit because of his or her conduct during the sessions.” App. 79a. It noted that “the school district’s presenters did not state or insinuate that an employee’s silence or dissenting views would be considered ‘unprofessional’ and

a basis to deny credit for attendance at the training.” App. 84a. The panel therefore concluded that respondents’ “fear of punishment was too speculative to support a cognizable injury under the First Amendment.” App. 83a.

The panel likewise concluded that Henderson’s completion of the online modules did not constitute injury-in-fact. It agreed with the district court that “in this type of training module, an employee’s ‘selection of credited responses on an online multiple-choice question reflects at most a belief about how to identify the question’s credited response.’” App. 86a. The panel explained that “a public employer can require employees to demonstrate as part of their official duties that they understand the employer’s training materials.” *Ibid.*

The panel vacated the attorney’s fee award. App. 87a-88a. The panel explained that “[c]onstitutional law in this area is unsettled and developing,” making “[t]he doctrines of compelled speech [and] chilled speech * * * often difficult to apply.” App. 87a.

4. The Eighth Circuit granted respondents’ petition for rehearing en banc and vacated the panel opinion. By a one-vote margin, the en banc court reversed the district court’s dismissal. App. 1a-39a.

a. The six-judge majority held that the record showed “an objectively reasonable chilling effect on speech that would cause a person of ordinary firmness to self-censor, and [respondents] did self-censor.” App. 22a.

In the majority’s view, “it is of little consequence that * * * no one was forced to leave the training, and the school district did not reduce anyone’s pay.” App. 20a. Rather, the majority concluded respondents “have shown an objectively reasonable fear of negative consequences sufficient to demonstrate an injury in fact based on the trainers’ responses to their opposing views and the school district’s warning that if they did not complete the

training, they would not receive the mandatory professional development credit.” App. 14a. “A fear of punishment cannot be ‘wholly subjective’ or ‘not credible’ when the school district tells staff that they must complete the training to get paid and publishes a warning that they will be told to leave the training with no credit if they act ‘unprofessional.’” App. 23a. The majority also found that Henderson’s testing constituted injury because the format “precluded employees from proceeding to the next question (and completing the module) unless they selected the ‘correct’ answer as deemed by the school district.” App. 24a. According to the majority, the modules thus “forced acceptance or adoption of the school district’s views.” *Ibid.*

Respondents’ complaint repeatedly tied the challenged speech to their employment. It alleged that the District “maintain[ed] policies that demand[ed] staff understand and promote so-called racial equity as part of their job responsibilities,” App. 115a; had “mandate[d] these viewpoints as part of staff’s job responsibilities,” App. 94a; “b[ound] equity to staff’s job responsibilities,” App. 114a, App. 95a (similar); and emphasized that the District stated that “racial equity ‘is more than a value, but now part of our work and job responsibilities,’” App. 94a-95a. The majority nonetheless faulted the district court for “not consider[ing] whether there were genuine issues of material fact as to whether the speech was pursuant to official duties as opposed to merely concerning [respondents’] duties,” and held that “[t]here remains an unresolved dispute on the issue of whether the compelled speech * * * was pursuant to [respondents’] official duties.” App. 25a. The majority reaffirmed the panel’s vacatur of attorney’s fees and denied respondents’ requests to have the case reassigned on remand. App. 26a-27a.

b. Five judges dissented. Chief Judge Colloton, joined by Judges Loken, Smith, Shepherd, and Kelly, would have held that respondents suffered no cognizable First Amendment injury. App. 27a-32a. He explained that any “decision to self-censor based on supposed threat of sanctions was not objectively reasonable,” because “[a] reasonable employee would not construe a requirement of professionalism to forbid a civil discussion or debate about training materials with which the employee disagrees.” App. 29a. Both “Henderson and Lumley engaged in such a discussion without any retribution from the employer,” and there was “no evidence that the trainers * * * threatened that [Henderson] would be written up or terminated” for expressing disagreement. *Ibid.*

The dissenters likewise rejected the compelled-speech theories. As to the live training, the dissenters observed that “any fear that [respondents] would be punished as unprofessional for stating [their] views is speculative and insufficient.” App. 30a. As to the online modules, the dissenters agreed with the district court that “[i]n this type of training module * * * an employee’s ‘selection of credited responses on an online multiple-choice question reflects at most a belief about how to identify the question’s credited response.’” *Ibid.* Public employers, the dissenters emphasized, are “entitled to maintain policies with which some employees disagree,” and they do not injure their employees by “failing to ‘welcome’ opposition.” App. 31a.

Chief Judge Colloton warned that “[p]ublic employee training will now be fraught with uncertainty. An employer who trains on any subject from any point of view, while requiring employees to be professional, is subject to a federal lawsuit by an employee who disagrees with the training and keeps quiet. * * * [T]he floodgates are open.” App. 32a.

Judge Shepherd wrote a separate dissent, joined by Judges Loken and Kelly. App. 32a. He emphasized that the record contained “no such evidence” that respondents were “forced * * * to accept the school district’s views under threat of punishment,” and that the district’s warning about completing the training did “not contain even a hint that dissenting views might be punished.” App. 33a (ellipsis in original).

In his view, respondents’ fears were “not tied to anything besides [their] *subjective and personal* belief[s] that the school district did not share [their] views.” App. 35a. Judge Shepherd also questioned the majority’s treatment of the official-duties issue. He reasoned that the majority’s analysis was “self-defeating” because it “assumes the other attendees were speaking as part of their job duties while simultaneously assuming the plaintiffs were merely present as private citizens.” App. 37a. “Both assumptions,” he concluded, “cannot be true.” *Ibid.*

5. The court denied the District’s petition for rehearing en banc. App. 90a.

REASONS FOR GRANTING THE PETITION

The courts of appeals are intractably divided over what a plaintiff must show to establish standing for chilled- and compelled-speech claims. Some circuits apply *Clapper* and require a present objective harm or a certainly impending adverse consequence. Others permit suit whenever self-censorship appears objectively reasonable, or when the alleged compulsion is more than minimal and not wholly subjective. The conflict is mature, widely acknowledged, and outcome determinative. Respondents lack standing for their chilled-speech claims under the standard applied in the First, Fifth, and Sixth Circuits, and for their compelled-speech claims under the standard applied in the Ninth and Eleventh Circuits.

The issue is exceptionally important to thousands of public employers and millions of public employees nationwide. This case is an ideal vehicle to resolve it: the record is fully developed, the relevant facts are undisputed, and a ruling for petitioners would end the case. This Court’s review is warranted now.

I. THE CIRCUITS ARE DIVIDED

For “chill” claims, the First, Fifth, and Sixth Circuits follow *Clapper* and require that a future consequence be “certainly impending” before a plaintiff may establish standing based on self-censorship. By contrast, the Seventh, Tenth, and Eleventh Circuits—joined by the Eighth Circuit below—apply a version of the test *Clapper* rejected, asking whether the plaintiff’s self-censorship was “objectively reasonable.” The Third and Fourth Circuits have cited the higher “certainly impending” *and* lower “objective reasonableness” standards, sometimes in the same opinion.

“Compelled” speech standards are similarly unsettled. The Ninth and Eleventh Circuits require a threatened injury be “certainly impending,” while the Tenth Circuit—joined by the Eighth here—requires only that the threat of injury be “more than minimal” and not “wholly subjective.”

The decision below deepens the confusion on both fronts and exemplifies the “lamentable” “lack of clarity” in First Amendment standing law. *Chemerinsky, Chill*, *supra*, at 482.

A. The First, Fifth, And Sixth Circuits Apply *Clapper*’s “Certainly Impending” Requirement To Chilled-Speech Standing

In chilled-speech cases, the First, Fifth, and Sixth Circuits require the plaintiff to demonstrate that claims of self-censorship rest on a “certainly impending” threat of adverse consequences, rather than merely an

“objectively reasonable” apprehension. Those authorities apply a bedrock Article III principle: A plaintiff cannot convert a speculative or uncertain future harm into a present constitutional injury merely by altering her conduct in anticipation of that harm.

In *Blum v. Holder*, animal rights activists alleged that the Animal Enterprise Terrorism Act unconstitutionally chilled their speech by limiting their ability to publicize animal-rights abuses. 744 F.3d at 792-793. The First Circuit noted that “[b]efore the decision in *Clapper*, [it had] applied an ‘objectively reasonable’ fear of prosecution injury standard.” *Id.* at 798. But the court “reject[ed] [the activists’] arguments that *Clapper* ha[d] no application” to their case, explaining that it displaced the more lenient standard. *Id.* at 799. The court affirmed dismissal because the plaintiffs’ asserted chill rested on a theory of injury that was not “even close to impending” and thus “too speculative for Article III purposes.” *Ibid.*

The Fifth Circuit likewise applies *Clapper* in chill cases, requiring plaintiffs to show that “each link in the chain of contingencies * * * be ‘certainly impending.’” *Glass v. Paxton*, 900 F.3d 233, 239 (2018). In *Glass*, a professor challenged a university policy prohibiting instructors from banning handguns in their classrooms. *Id.* at 237. The professor alleged the ban chilled speech because the presence of handguns in the classroom would “have a substantial chilling effect on class discussion.” *Ibid.* The Fifth Circuit declined to apply an “objectively understandable and reasonable” test, explaining that it would “improperly water[] down the fundamental requirements of Article III.” *Id.* at 241. Instead, the court held that *Clapper*’s “certainly impending” language applies in chill cases. *Ibid.* Because the professor merely “allege[d] *reasonable probability* of future harm from concealed-carrying students,” the Fifth Circuit held that

no threat was “certainly impending,” and the professor lacked standing. *Id.* at 242.

The Sixth Circuit also applies that standard. In *McKay v. Federspiel*, 823 F.3d 862 (2016), the plaintiff challenged a local policy prohibiting recording in courtrooms. *Id.* at 864-865. He alleged that the policy—coupled with courthouse signs threatening sanctions for violations—chilled his effort to record “activities of public interest.” *Id.* at 867, 869. After recognizing that future injury must be “certainly impending” or present a “substantial risk” of occurring, the court held that the plaintiff lacked standing because he failed to “allege a subjective chill *and* point to some combination of” concrete actions as an “indication of imminent enforcement” against *him*. *Id.* at 868-869, 871. The court emphasized that it required more exacting proof, and found that warning signs “address[ing] the general public” were insufficient. *Id.* at 869.

B. The Seventh, Tenth, And Eleventh Circuits Apply The More Forgiving “Objective Reasonableness” Standard To Chilled-Speech Claims

Other circuits treat self-censorship as a present injury when it is “objectively reasonable,” without requiring proof that any adverse consequence is certainly impending. That approach is materially more forgiving than the “certainly impending” standard.

In the Seventh Circuit, First Amendment standing turns on whether a plaintiff has alleged “an objectively reasonable chilling effect on his or her speech.” *Speech First, Inc. v. Killeen*, 968 F.3d 628, 639 (2020). In *Brown v. Kemp*, 86 F.4th 745 (2023), animal-rights activists sought to photograph and record hunters to “publicize their views about hunting and educate the public,” and alleged that hunter-harassment laws chilled their speech. *Id.* at 762. Without referencing *Clapper*’s certainly-impending standard, the majority held that the activists

had standing because their fears of enforcement were “reasonable and well-founded.” *Id.* at 767.

Judge Kirsch dissented, citing *Clapper*. *Id.* at 792 (Kirsch, J., dissenting). The activists, he explained, had not alleged “a certainly impending, sufficiently imminent [future] injury” because they did not face a “credible threat of enforcement for their conduct.” *Id.* at 792-793. He criticized the majority’s “misplaced” reliance on pre-*Clapper* cases “employ[ing] a reasonable probability standard” that is “inconsistent with the Supreme Court’s requirement that threatened injury must be certainly impending to constitute injury in fact.” *Id.* at 795 (cleaned up).

The Tenth Circuit applies an “objectively justified” test, which it describes as a “relatively relaxed standard for an injury-in-fact on a chilled speech claim.” *Rio Grande Found. v. Oliver*, 57 F.4th 1147, 1161 (2023). In *Rio Grande*, the plaintiffs claimed that expenditure disclosure requirements chilled their speech in an election. *Id.* at 1157-1158. The Tenth Circuit reversed the district court’s denial of standing, holding that under the “objectively justified fear” test, “a reasonable organization would refrain from desired speech * * * where disclosing donors would alienate them.” *Id.* at 1165. The court emphasized that its standard was “intended to reflect the low bar for showing standing on a chilled speech claim, not raise that bar.” *Id.* at 1162.

Despite applying *Clapper* in the *compelled*-speech context, see *infra* at 21, the Eleventh Circuit employs a similarly permissive rule in chilled-speech cases, asking whether a policy “objectively chills” speech such that a “reasonable would-be speaker [would] self-censor,” *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1120 (2022). The plaintiff in *Speech First* challenged the constitutionality of university bias response teams, which allegedly chilled student speech although the teams

lacked formal authority to punish students. *Id.* at 1123. Without mentioning *Clapper*, the Eleventh Circuit held that the plaintiff adequately alleged an Article III injury. *Id.* at 1120. The court concluded that the plaintiff had standing because “[n]o reasonable college student wants to run the risk of being accused of offensive * * * or harmful conduct.” *Id.* at 1124.

C. The Third And Fourth Circuits Invoke Both Standards Without Clarifying Which Controls

The Third and Fourth Circuits do not fit neatly on either side of the chilled-speech conflict. Both have invoked *Clapper*’s imminence requirement *and* a more forgiving objective-reasonableness inquiry—sometimes within the same opinion—without clearly explaining how the two standards relate or which controls when they point in different directions.

In *Greenberg v. Lehocky*, 81 F.4th 376 (3d Cir. 2023), an attorney challenged a professional-conduct rule prohibiting “harassment * * * based upon race.” *Id.* at 382. He alleged the rule chilled his speech because he planned to engage in educational seminars involving controversial subjects. *Id.* at 381-382. The Third Circuit cited both the “objectively reasonable” and “certainly impending” standards and concluded that the attorney lacked standing because his fear that the rule would be enforced against him was based on a “highly attenuated chain of possibilities” and “his perception of the social climate,” rather than a credible threat that the rule would be enforced against him. *Id.* at 387, 389.

The Fourth Circuit likewise invoked both standards in *National Association of Diversity Officers in Higher Education v. Trump*, 167 F.4th 86, 96 (2026). The court began by explaining that the injury-in-fact requirement is “somewhat relaxed” in First Amendment cases and that self-censorship may suffice when the alleged chilling effect is “objectively reasonable” and would deter “a

person of ordinary firmness” from speaking. *Id.* at 96-97. Even so, the court applied *Clapper* and denied standing because the plaintiff’s theory of injury rested on a “highly attenuated chain of possibilities” that did “not satisfy the requirement that threatened injury must be certainly impending.” *Id.* at 97.

D. Disagreement Over Compelled-Speech Claims Further Supports Review

Related compelled-speech decisions reinforce the need for review. There is no question that government-compelled speech can constitute an injury-in-fact. See *Cressman v. Thompson*, 719 F.3d 1139, 1145 (10th Cir. 2013); *Jacobs v. Clark County School District*, 526 F.3d 419, 426-427 (9th Cir. 2008). But when the asserted compulsion depends on potential future consequences, courts employ materially different approaches.

1. The Ninth And Eleventh Circuits Apply *Clapper* To Compelled-Speech Cases

In *Wright v. Service Employees International Union Local 503*, 48 F.4th 1112 (9th Cir. 2022), a retired public employee alleged that a union had compelled her speech by threatening to deduct dues without her consent. *Id.* at 1116-1117. The Ninth Circuit rejected the plaintiff’s claim as “too speculative to confer standing” because she would need to return from retirement and the union would have to again compel dues before she faced another deduction. *Id.* at 1120-1121. Thus, the threatened injury was “not certainly impending.” *Ibid.*

The Eleventh Circuit likewise applied *Clapper* in *Polelle v. Florida Secretary of State*, 131 F.4th 1201 (2025). Polelle alleged that Florida’s closed-primary system forced him to choose between affiliating with a political party and forgoing participation in primary elections. *Id.* at 1205-1207. The court applied *Clapper*, finding injury “imminent” because “[u]nless this Court

intervenes, Defendants will continue to * * * prohibit [him] from voting in” future primaries. *Id.* at 1209 (alterations in original).

2. The Tenth Circuit Applies A Forgiving “More Than Minimal And Wholly Subjective” Standard To Compulsion Claims

In *Semple v. Griswold*, 934 F.3d 1134, 1143 (10th Cir. 2019), a proponent of a Colorado ballot initiative challenged a law requiring that he gather signatures from every state senate district. The plaintiff alleged the law compelled him to speak in districts he wished to avoid. The court held that a plaintiff need not identify a direct threat of imprisonment, fines, an injunction, or taxation; only discouragement that is “minimal” and “wholly subjective” is insufficient. *Ibid.*

E. The Decision Below Deepens Both Circuit Splits, Which Are Outcome Determinative Here

The decision below places the Eighth Circuit on the more permissive side of both the chilled-speech and compelled-speech conflicts. No District official told respondents that expressing disagreement would be considered unprofessional or threatened discipline, removal, lost pay, or denied credit for dissent. Respondents expressed contrary views on several occasions without suffering any such consequences. Both received compensation and credit, and one was later promoted. Their feared injuries were not “even close to impending.” *Blum*, 744 F.3d at 799; see *Clapper*, 568 U.S. at 401.

Nevertheless, the en banc majority held that respondents established a chilled-speech injury because they had “an objectively reasonable fear of negative consequences,” App. 14a, and a compelled-speech injury because the perceived threat was “more than ‘minimal’ and ‘wholly subjective,’” App. 22a (quoting *Semple*, 934

F.3d at 1143). Applying those standards, the majority considered it “of little consequence” that respondents were never threatened with discipline, “no one was forced to leave the training, and the school district did not reduce anyone’s pay.” App. 20a. That outcome is irreconcilable with *Clapper*, with the standard the First, Fifth, and Sixth Circuits have applied to chilled speech, and with the standard the Ninth and Eleventh Circuits have applied to compelled speech.

Now more than ever, “it is generally hard to predict whether an allegation of chilled speech will be sufficient to establish justiciability.” Chemerinsky, *Chill*, *supra*, at 471; see McDowell, *The Impact of Clapper*, *supra*, at 263-264 (recognizing split). Only this Court can resolve the acknowledged split and establish a uniform rule on these “ubiquitous” standing issues with “profound implications for the First Amendment.” Chemerinsky, *Chill*, *supra*, at 508.

II. THE DECISION BELOW IS WRONG

Federal court jurisdiction is limited to actual cases or controversies. See U.S. Const. art. III, § 2, cl. 1. To establish Article III standing, “an injury must be ‘concrete, particularized, and actual or imminent.’” *Clapper*, 568 U.S. at 408-409 (citation omitted). The party invoking federal jurisdiction bears the burden of establishing each element. *Id.* at 411-412.

“Although imminence is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is *certainly* impending.” *Id.* at 409 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 565 n.2 (1992)). There must be more than an “objectively reasonable likelihood” that the injury will occur. *Id.* at 410. The en banc majority applied precisely the “objective-reasonableness” standard this Court rejected.

A. Article III Requires A Specific Present Harm Or Imminent Governmental Threat

This Court’s standing doctrine imposes a demanding threshold for threatened injury, foreclosing speculative, attenuated, or self-generated theories of injury. Allegations of subjective chill fall far short. In *Laird v. Tatum*, 408 U.S. 1 (1972), this Court held that “[a]llegations of a subjective ‘chill’ are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.” *Id.* at 13-14. And in *Clapper*, the Court held that a threatened injury must be “certainly impending”; an “objectively reasonable likelihood” of future harm is insufficient. 568 U.S. at 410, 414 & n.5. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014), reaffirmed that a future injury must be “certainly impending” or must present a “substantial” risk that the harm will occur” to satisfy Article III. *Id.* at 158 (quoting *Clapper*, 568 U.S. at 410).

A plaintiff cannot evade those requirements by recasting speculative future harms as present self-censorship. *Clapper* rejected the contention that plaintiffs can “manufacture standing” by incurring present burdens in response to a feared governmental action that is not sufficiently imminent. *Clapper*, 568 U.S. at 416. Otherwise, plaintiffs could lower Article III’s threshold simply by changing their behavior in response to their own subjective apprehensions.

That principle governs First Amendment pre-enforcement claims. A plaintiff must identify a “credible threat” that the government will take adverse action against her intended conduct. *Susan B. Anthony List*, 573 U.S. at 159. Relevant considerations include whether the challenged rule reaches the plaintiff’s intended conduct, whether officials have threatened enforcement, and whether they have previously enforced the rule against the plaintiff or similarly situated persons. *Id.* at

161-165. The inquiry thus focuses on the likelihood of governmental action—not merely whether the plaintiff’s reaction to surrounding circumstances is understandable. A plaintiff does not establish injury merely by responding to governmental authority that “does not regulate, constrain, or compel any action” on her part. *Clapper*, 568 U.S. at 419. Discretionary government authority to act, without more, does not establish a certainly impending injury. *Ibid*.

The majority below inverted that inquiry. It asked whether respondents had an “objectively reasonable fear of negative consequences” and whether the circumstances would cause a “person of ordinary firmness to self-censor.” App. 14a, 22a. But Article III does not turn simply on the reasonableness of respondents’ reaction. The relevant question under this Court’s precedents was whether the District had imposed a specific present harm or credibly threatened an imminent consequence for expressing disagreement. On this record, it had not.

B. Neither Respondent Was Chilled By A Certainly Impending Threat

Respondents based their chilled-speech claim on the requirement that employees complete the training to receive compensation and credit, the slide warning employees to “Be Professional—or be Asked to Leave with No Credit,” and the trainers’ and other employees’ reactions to respondents’ views. App. 7a, 14a, 19a-23a. In the majority’s view, those circumstances provided “an objectively reasonable basis for self-censoring.” *Id.* at 20a. That incorrect standard led to the wrong outcome.

While the District required employees to attend, participate, and behave professionally, neither the training materials nor District personnel stated or suggested that merely expressing disagreement was “unprofessional.” Nor did the professionalism warning identify any forbidden viewpoint. As the unanimous panel

found, the presenters “did not state or insinuate that an employee’s silence or dissenting views would be considered ‘unprofessional’ and a basis to deny credit.” App. 84a. The trainers instructed employees to stay engaged, lean into discomfort, speak from their own experiences, and behave professionally. App. 5a-7a. As Judge Shepherd explained, that “does not contain even a hint that dissenting views might be punished.” App. 33a.¹

Respondents’ experiences confirm the absence of any imminent threat. While coworkers and trainers told them they were “confused and wrong,” and respondents worried their views might polarize colleagues, the District “took no further action,” App. 47a, nor suggested that disagreement was unprofessional. No one threatened respondents with discipline, termination, removal, loss of pay, or denial of credit. App. 29a. Both respondents received compensation and credit; neither was fired, demoted, suspended, transferred, disciplined, denied promotion, or subjected to any change in compensation or benefits. App. 42a. Both continued working for the District. And Lumley was promoted. App. 28a.

Respondents’ chilled-speech theory thus depended on a conjectural chain: that the District would treat civil disagreement as unprofessional; remove the dissenting employee; deny credit and pay; and perhaps impose further discipline. Nothing in the District’s rules, the trainers’ statements, or respondents’ experiences established that any link in that chain was certainly

¹ The majority cited Henderson’s deposition statement that she was told she “had to agree or [she] would lose credit.” App. 6a. But tellingly, respondents did not rely on that statement in their summary judgment briefing or on appeal, and the undisputed introductory script contained no such suggestion. App. 33a-34a (Shepherd, J., dissenting).

impending. Respondents' claim is precisely the sort of subjective chill that *Laird* and *Clapper* held insufficient.

C. The Training Did Not Compel Respondents To Express Or Adopt The District's Views

Respondents' compelled-speech claims rely on the District's "be professional" directive, and thus fail for similar reasons. The instruction to "Be Professional" prescribed no words, viewpoint, or profession of belief. It did not require respondents to endorse the training, repeat a slogan, renounce their own views, or represent that they personally agreed with any proposition.

During the "four corners" exercise in which Henderson participated, no presenter told employees that they must select "agree" to any prompt, and the District made no statement suggesting there would be consequences for selecting another response. App. 54a. Employees who "disagree[d]" with a prompt were not sanctioned or reprimanded. No threat was "certainly impending." *Clapper*, 568 U.S. at 416.²

Henderson's claim based on her completion of training modules fares no better. When Henderson initially selected a noncredited response, the module provided feedback explaining the District's policy and allowed her to select the credited answer and proceed. App. 8a-9a. The en banc majority held that this format "forced acceptance or adoption of the school district's views." App. 24a. But that conclusion confuses identifying an employer's policy with affirming it as one's own view. An employee who correctly identifies her

² Lumley's compelled-speech claim fails at the threshold. As Chief Judge Colloton observed in dissent, "Lumley does not identify any speech that was allegedly compelled." App. 30a. The majority cites no instance in which Lumley was required to utter any particular statement under threat of punishment. The absence of any identified compelled message is fatal. *Rumsfeld v. FAIR*, 547 U.S. 47, 62 (2006).

employer’s policy does not thereby adopt that policy as her personal statement. As the district court explained, “answering an online multiple-choice question does not suggest ‘affirmation of a belief and an attitude of mind.’” App. 62a. Selection of a credited response “reflects at most a belief about how to identify the question’s credited response.” App. 63a.

The self-assessment questions likewise compelled no particular viewpoint. The District did not prescribe particular answers. While Henderson alleges she tailored her responses because she believed the assessment “might be reviewed by the school district,” App. 9a, no District official told her to answer in any particular way. Put simply, the District did not compel respondents to say anything.³

* * * * *

Respondents disliked portions of the District’s training and encountered disagreement when they expressed contrary views. But disagreement is not governmental coercion. The District neither threatened respondents with consequences for dissent nor compelled them to profess personal agreement with its policies. Because respondents showed no specific present objective harm, no sufficiently imminent threat of future harm, and no compelled personal affirmation, they lacked Article III

³ Nor must this Court resolve the separate question whether any challenged speech was undertaken pursuant to respondents’ official duties. The majority remanded that issue for further proceedings. App. 25a. The antecedent defect is simpler: the live training prescribed no message respondents had to express, and the online modules did not attribute the District’s credited answers to Henderson as her personal beliefs. Because respondents were not compelled to communicate personal assent in the first place, the official-duties issue does not affect the standing question here.

standing. The district court’s judgment should have been affirmed.

III. THE QUESTION PRESENTED IS IMPORTANT AND WARRANTS REVIEW IN THIS CASE

This case presents an important and recurring question at the intersection of Article III standing and the government’s authority to manage its workforce: When does mandatory workplace training inflict a First Amendment injury on a public employee who disagrees with the content of the employer’s policy? The decision below would allow any employee who believes a “program was inappropriate, misguided, or offensive” to “make a federal case out of it.” App.27a-28a. It treats routine features of workplace instruction—mandatory attendance, participation expectations, discussion prompts, and knowledge checks—as constitutional injuries whenever an employee objects to the employer’s policy and claims others reacted negatively to the employee’s disagreement.

1. Public employers cannot function without training their employees. State and local governments must train employees on workplace policies, safety requirements, and legal obligations. Public schools train teachers and staff on student safety, special-education obligations, harassment prevention, suicide prevention, Title IX, disability accommodations, data privacy, classroom management, and professional conduct; many such trainings are mandated by statute.⁴ Police departments train officers on use of force, racial profiling, de-escalation, implicit bias, domestic violence, mental-health

⁴ For example, statutorily required training in youth and teen suicide prevention, *e.g.*, Ark. Code Ann. § 6-17-708; Neb. Rev. Stat. Ann. § 79-2,146; S.D. Codified Laws § 13-42-71; recognizing child abuse and neglect, *e.g.*, Ark. Code Ann. § 6-61-133; Iowa Code Ann. § 232.69; and dyslexia, Minn. Stat. Ann. § 122A.092.

response, and constitutional limits on searches and seizures; again, many are mandated by statute.⁵ Prosecutors, social-service agencies, corrections departments, licensing boards, and other public employers likewise rely on mandatory training to ensure that employees understand and comply with the government's policies and legal duties.

Whether such trainings inflict an Article III injury on employees who disagree with their content is an issue of far-reaching importance, implicating thousands of public employers and more than one million state and local government employees in the Eighth Circuit alone, including hundreds of thousands of public-school employees. See U.S. Census Bureau, *2022 Census of Governments, Organization Tables: Table CG2200ORG02: Local Governments by Type and State: 2022*, <https://perma.cc/P76P-8DBR>; U.S. Census Bureau, *GS00EMP01: State and Local Government Employment and Payroll Data: U.S. and States: 1993–2025*, <https://perma.cc/8XEN-2X2M>. Nationwide, the issue

⁵ For example, legally mandated training in de-escalation, *e.g.*, Ark. Code Ann. § 12-9-125; Neb. Rev. Stat. Ann. § 81-1410.01; Iowa Code Ann. § 80B.11G; racial-profiling and implicit bias, *e.g.*, Ark. Code Ann. § 12-12-1404; Minn. Stat. Ann. § 626.8469; Neb. Rev. Stat. Ann. § 81-1410.01; domestic violence and child abuse, *e.g.*, Ark. Code Ann. § 12-9-113; S.D. Codified Laws § 23-3-42.1; Iowa Code Ann. § 232.69; Iowa Code Ann. § 80B.11; sexual assault, *e.g.*, Ark. Code Ann. § 12-9-114; mental illness and crisis intervention, *e.g.*, Ark. Code Ann. § 12-9-119; Iowa Code Ann. § 80B.11; Minn. Stat. Ann. § 626.8469; opiate-antagonists and drug overdoses, *e.g.*, Ark. Code Ann. § 12-9-122; Minn. Stat. Ann. § 626.8443; interacting with persons with autism, *e.g.*, Minn. Stat. Ann. § 626.8474; missing persons, *e.g.*, Ark. Code Ann. § 12-9-123; S.D. Codified Laws § 23-3-18.1; interacting with persons with dementia, *e.g.*, Ark. Code Ann. § 12-9-126; and firearms training, *e.g.*, Minn. Stat. Ann. § 626.8452; Ark. Code Ann. § 12-9-104; Neb. Rev. Stat. Ann. § 81-1414.07; N.D. Admin. Code § 109-02-04-08.

implicates more than 90,000 local governments and 20.3 million employees.

Workplace trainings commonly require employees to attend, remain engaged, answer questions, complete exercises, and demonstrate that they understand their employer's policies. They often require employees to select credited answers or participate in structured discussions.

2. Inevitably, trainings involve policies that some employees oppose. The decision below destabilizes a bedrock tool of public administration. "Acceptance of [the] novel theory" underlying the decision below would "make it impractical for public employers to test employees on their knowledge of organization policy without facing lawsuits for supposedly compelling employee speech." App. 30a-31a. As Chief Judge Colloton explained:

A public school, for example, may train its teachers to lead the Pledge of Allegiance before class. The school is not required to welcome the views of a teacher who complains that the Pledge amounts to unconstitutional religious indoctrination. The school may, without causing injury, reiterate its policy that the Pledge is constitutional, patriotic, and proper. Or a public employer may train its employees that subordinates may not be used for personal business. The employer is not required to acknowledge merit in the views of an employee who thinks it proper to use staff for private errands, and the employer may restate its policy that public employees must be assigned exclusively to public business. An employer does not cause Article III injury by declining to acquiesce in the contrary views of dissenting employees.

App. 31a.

The problem extends far beyond this particular training or any one side of the ideological spectrum. Public employers now face potential liability for complying with myriad state statutes that mandate public-employee trainings. States within the Eighth Circuit require public employers to hold numerous public-employee trainings, ranging from youth suicide prevention for public school employees, see, *e.g.*, Neb. Rev. Stat. Ann. § 79-2,146; Ark. Code Ann. § 6-17-708, to racial-profiling and implicit bias trainings for police officers, see, *e.g.*, Ark. Code Ann. § 12-12-1404; Minn. Stat. Ann. § 626.8469, to domestic-abuse and mental health training for state’s attorneys, see S.D. Codified Laws § 23-3-39.6. But the Eighth Circuit’s ruling means that conducting those state-mandated trainings will be “fraught with uncertainty.” App. 32a (Colloton, C.J., dissenting). The Eighth Circuit’s decision undermines the basic functions of local and state governments, compromising their ability to serve their communities effectively.

The issue cuts across viewpoints and “portends a host of litigation over public employee training”:

If the next “equity training” program proceeds from a color-blind perspective in the tradition of Justice Harlan’s famous dissent, and requires trainees to be professional, then the silent employee who favors modern-day diversity, equity, and inclusion will have standing to sue the school district for violations of the First Amendment. Or if a public employer trains its employees about patriotism and the sacred and cherished symbol of the American flag, and requires trainees to be professional, then the silent employee who favors flag burning as a means of protest will have standing to sue the employer for violations of the First Amendment. If it is apparent that the employer

considers racial preferences or flag desecration to be unacceptable, then the court authorizes litigation by dissenting employees who claim to have “self-censored” during a training session.

App. 31a-32a (Colloton, C.J., dissenting). The same logic will apply if an employee disagrees with public employer policies involving (for example) transgender employees or students, same-sex marriage, sexual harassment, and countless other subjects.

Chief Judge Colloton summarized the consequences: “An employer who trains on any subject from any point of view, while requiring employees to be professional, is subject to a federal lawsuit by an employee who disagrees with the training and keeps quiet.” App. 32a. “[I]f the court is true to its word, then the floodgates are open.” *Ibid.*

3. Already, litigants are invoking *Springfield* to attack government policies, both within the Eighth Circuit and nationwide—and outside the context of public school training. See, *e.g.*, Principal Br. of Plaintiffs/Appellees/Cross-Appellants at 26, *Welty v. Dunaway*, No. 25-5738 (6th Cir. Jan. 28, 2026) (relying on *Springfield* to argue Tennessee cannot prohibit counseling minors about abortion care, including advising on how to seek out-of-state abortions); see also *Davis v. Indep. Hous. Auth.*, 2026 WL 1470624, at *7 (W.D. Mo. May 26, 2026) (applying *Springfield* to find plaintiff “ostensibly pleaded” First Amendment retaliation claim arising from plaintiff’s termination from Section 8 housing program after refusing to sign an information-release form). And commentators recognize that there is more litigation to come. See, *e.g.*, Timothy R. Snowball, *8th Circuit Revives Educators’ Challenge to “Anti-Racist” Training*, Legal Insurrection (Jan. 8, 2026 at 9:00 AM)

(“[T]his decision open[s] the courthouse doors for similar claims * * * .”), <https://perma.cc/STC6-FQDX>.

4. Members of this Court have recognized the importance of resolving when a chilling effect on speech becomes an actionable Article III injury. Justice Thomas recently urged review of a circuit split over whether public university policies “objectively chill” speech for purposes of Article III standing; and Justice Alito voted for review. *Speech First, Inc. v. Whitten*, 145 S. Ct. 701, 701, 704 (2025) (Thomas, J., dissenting from denial of certiorari). And the Court previously granted review to decide whether a public employee has a First Amendment right to disregard official policy of her employer when performing official actions, *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 64 (1997)—although the Court resolved the case on mootness grounds, *id.* at 64-80. Scholars likewise have recently emphasized that the issue is “ubiquitous” and has “profound implications for the First Amendment.” See, e.g., Chemerinsky, *Chill*, *supra*, at 450, 508.

The breadth of *amicus* participation before the Eighth Circuit underscores the importance of the issue. *Amici* included organizations and governmental actors spanning a wide range of perspectives: the American Civil Liberties Union of Missouri, Alliance Defending Freedom, Foundation for Individual Rights and Expression, Reason Foundation, Cato Institute, Pacific Legal Foundation, numerous States, and the Missouri School Boards’ Association. In short, the issue is not limited to one school district, one training topic, or one ideological context. It affects public employers, public employees, civil-liberties organizations, States, school boards, and advocacy groups across the spectrum.

5. Further percolation is unnecessary. The standards governing chilled- and compelled-speech

claims have been thoroughly examined by numerous courts of appeals, which have adopted conflicting standards. See *supra* at 15-22. Further delay would simply deepen the existing confusion while public employers continue to face uncertainty over routine trainings.

6. This case is an excellent vehicle. The First Amendment standing question was extensively briefed at each stage of the proceedings and squarely addressed in published opinions at every level. The case arises from a developed summary-judgment record, and the material facts addressing standing are undisputed. Answering the question in petitioners' favor would end this litigation.⁶

The decision below transforms ordinary workplace training practices into federal constitutional injuries, creates immediate uncertainty for public employers, and deepens confusion over the showing required for First Amendment standing. This Court's review is warranted now.

CONCLUSION

The petition for a writ of certiorari should be granted.

⁶ It is immaterial that petitioners may prevail on remand if the speech was "pursuant to [respondents'] official duties," App. 25a. See, *e.g.*, U.S. Cert. Reply Br. at 10, *Salazar v. Patchak*, 567 U.S. 209 (2012) (No. 11-247) ("[T]he possibility that [a petitioner] might ultimately be able to identify [an alternative ground for prevailing] would not prevent the Court from addressing the questions presented * * * ."); U.S. Cert. Reply Br. at 10, *Garland v. Singh*, 602 U.S. 447 (2024) (No. 22-884) (there is "no reason to deny review," even if petitioner "could still prevail on alternative grounds on remand").

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