

No. 26-156

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,
Respondents.

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

**BRIEF OF THE COMMONWEALTH OF
VIRGINIA AS AMICUS CURIAE IN SUPPORT
OF PETITIONERS**

JAY JONES TILLMAN J. BRECKENRIDGE
Attorney General *Solicitor General*

TRAVIS G. HILL ETHAN P. FALLON
Chief Deputy *Deputy Solicitor General*
Attorney General *Counsel of Record*

KURT D. WALTERS
John Marshall Fellow

OFFICE OF THE ATTORNEY
GENERAL OF VIRGINIA
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071
SolicitorGeneral@oag.state.va.us

Counsel for Amicus Curiae the Commonwealth of Virginia

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	iii
INTEREST OF AMICUS CURIAE.....	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
I. Effective state government depends on training public employees to understand and implement government policy.....	2
A. Public employees are indispensable to effectuating state policy.	2
B. A trained public workforce is essential to carrying out state objectives.	4
II. The decision below effectively erases the line between workplace instruction and First Amendment coercion.	7
A. The Eighth Circuit’s approach rejects decades of this Court’s guidance.....	7
B. Chilled speech requires self-censorship tied to a credible governmental consequence.	9
C. Demonstrating understanding of government policy is different from personally affirming it.....	13

III. The decision below creates extraordinary uncertainty for states and warrants this Court’s immediate review.	17
A. Public employers will face an impos- sible bind.....	17
B. The consequences of this decision are not limited to equity training or any particular viewpoint.	20
CONCLUSION	22

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Am. Legion v. Am. Humanist Ass’n</i> , 588 U.S. 29 (2019).....	7
<i>Bd. of Cnty. Comm’rs v. Umbehr</i> , 518 U.S. 668 (1996).....	3
<i>Borough of Duryea v. Guarnieri</i> , 564 U.S. 379 (2011).....	3, 4
<i>City of Canton v. Harris</i> , 489 U.S. 378 (1989).....	18, 20
<i>Clapper v. Amnesty Int’l USA</i> , 568 U.S. 398 (2013).....	10
<i>Connick v. Myers</i> , 461 U.S. 138 (1983).....	9
<i>Connick v. Thompson</i> , 563 U.S. 51 (2011).....	7, 18
<i>Diamond v. Charles</i> , 476 U.S. 54 (1986).....	7
<i>Garcetti v. Ceballos</i> , 547 U.S. 410 (2006).....	3, 8, 9
<i>Henderson v. Springfield R-12 Sch. Dist.</i> , 163 F.4th 478 (8th Cir. 2025)	8, 10–16, 19
<i>Hollingsworth v. Perry</i> , 570 U.S. 693 (2013).....	7
<i>Laird v. Tatum</i> , 408 U.S. 1 (1972).....	8, 9

TABLE OF AUTHORITIES (CONTINUED)

<i>Pickering v. Bd. of Ed. of Twp. High Sch.</i> <i>Dist. 205</i> , 391 U.S. 563 (1968).....	8
<i>Rumsfeld v. Forum for Acad. & Inst.</i> <i>Rts., Inc.</i> , 547 U.S. 47 (2006).....	14
<i>Semple v. Griswold</i> , 934 F.3d 1134 (10th Cir. 2019).....	15
<i>Speech First, Inc. v. Cartwright</i> , 32 F.4th 1110 (11th Cir. 2022).....	12
<i>Susan B. Anthony List v. Driehaus</i> , 573 U.S. 149 (2014).....	10
<i>TransUnion LLC v. Ramirez</i> , 594 U.S. 413 (2021).....	7
<i>United Haulers Ass’n, Inc. v. Oneida- Herkimer Solid Waste Mgmt. Auth.</i> , 550 U.S. 330 (2007).....	3
<i>Waters v. Churchill</i> , 511 U.S. 661 (1994).....	3

Constitutional Provisions

U.S. Const. art. III, § 2.....	8
--------------------------------	---

Statutes

Va. Code § 22.1-253.13:1(B)	6
Va. Code § 22.1-253.13:1(H).....	20
Va. Code § 24.2-103(B)–(D).....	6
Va. Code § 24.2-115.2	19
Va. Code § 24.2-643(B)	19

TABLE OF AUTHORITIES (CONTINUED)

Regulations

6 Va. Admin. Code § 20-20-21(B)(1)	5
6 Va. Admin. Code § 20-20-70(B).....	6
6 Va. Admin. Code § 20-30-80(A).....	6, 20

Other Authorities

Natasha Isaac et al., U.S. Census Bureau, <i>Annual Survey of Public Employment & Payroll Summary Report: 2025</i> (2026).....	3
<i>Training Division</i> , Va. State Police, https://vsp.virginia.gov/sections-units- bureaus/bass/training-division/	4
U.S. Comm’n on Civ. Rts., <i>Enforcing Religious Freedom in Prisons</i> (2025)	16

INTEREST OF AMICUS CURIAE¹

The deeply divided Eighth Circuit decision below places public employers into profound legal uncertainty. The decision jeopardizes States' sovereign ability to effectuate their policies, efficiently administer public programs, and ensure compliance with applicable law.

The Commonwealth of Virginia alone directly employs more than 165,000 people performing vital functions such as law enforcement, public-benefits administration, and public education. Virginia local governments employ more than 400,000 additional workers, many of whom must satisfy training requirements and standards of conduct set by the Commonwealth.

The Eighth Circuit's approach to First Amendment standing would thrust federal courts into evaluating disagreements over workplace policy. The resulting legal costs would divert public resources away from critical government programs and public benefits.

The interests of federalism and effective governance, as well as respect for Article III's limitations, warrant this Court's review of the decision below. This Court should grant the petition for certiorari.

SUMMARY OF ARGUMENT

States cannot govern effectively if they cannot train employees who carry out their laws and policies.

¹ Amicus curiae notified counsel of record of its intent to file this brief, *see* Supreme Court Rule 37.2.

Public employers must be able to explain what government policy requires, correct misunderstandings, and test whether employees understand the rules they are expected to follow. None of that requires an employee to personally endorse the government's view.

The decision below blurs that basic line. It allows ordinary features of workplace training—mandatory participation, disagreement from trainers or coworkers, and comprehension checks—to supply the basis for chilled- or compelled-speech injuries even without a sufficiently concrete governmental threat or any compelled statement of personal belief. That rule leaves public employers guessing whether routine efforts to train their workforces will become federal constitutional cases.

The consequences are not limited to equity training or to any particular ideology. The same uncertainty follows states whenever they train employees on contested or mundane policies alike. This Court should grant review and restore a workable boundary between workplace instruction and First Amendment coercion.

ARGUMENT

I. Effective state government depends on training public employees to understand and implement government policy.

A. Public employees are indispensable to effectuating state policy.

States have a critical role as co-sovereigns in the American constitutional system. Unlike a private enterprise, a state government is “vested with the responsibility of protecting the health, safety, and

welfare of its citizens.” *United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 342 (2007). But states cannot perform that role by simply inscribing rules into a statute book. They rely heavily on public employees to carry out the policies they adopt.

The public workforce that performs this function is substantial. The U.S. Census Bureau estimates that state and local governments employ 20.3 million people. See Natasha Isaac et al., U.S. Census Bureau, *Annual Survey of Public Employment & Payroll Summary Report: 2025*, at 1 (2026).

This Court has repeatedly recognized the importance of maintaining an effective public workforce. If government employers lacked “a significant degree of control over their employees’ words and actions,” there “would be little chance for the efficient provision of public services.” *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006). Similarly, uniform and evenhanded application of the law would become difficult without training public employees to carry out the state’s policies.

First Amendment doctrine reflects this reality. A government’s “interest in achieving its goals as effectively and efficiently as possible” becomes particularly significant when government acts as an employer rather than as sovereign. *Bd. of Cnty. Comm’rs v. Umbehr*, 518 U.S. 668, 676 (1996) (quoting *Waters v. Churchill*, 511 U.S. 661, 675 (1994) (plurality opinion)). Courts disfavor the “invasive judicial superintendence” that would follow “[u]nrestrained application” of the First Amendment to government employment. *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 390–91 (2011). Otherwise, nearly every

governmental action in the workplace would “present a potential federal constitutional issue.” *Id.* at 391.

For government to function, public employees must understand what is expected of them, be equipped with the training and skills to carry out their responsibilities, and abide by basic rules of workplace professionalism.

The Commonwealth writes to highlight the risk that the decision below poses to these common-sense principles.

B. A trained public workforce is essential to carrying out state objectives.

Public employees effectuate a broad set of state policies. Some are state employees; others work for local governments subject to state standards. Together, they administer public-benefits programs such as Medicaid and SNAP, inspect nursing homes, run correctional facilities, regulate motor-vehicle use, provide public education, conduct elections, and enforce criminal law.

First, training ensures that state and local employees can effectively implement state policy. For example, the Virginia Department of State Police puts newly hired state troopers through an intensive 28-week Basic Trooper School. *See Training Division*, Va. State Police, <https://vsp.virginia.gov/sections-units-bureaus/bass/training-division/> (last visited Aug. 31, 2026). The Commonwealth also establishes compulsory minimum training standards for state and local law-enforcement officers. Virginia requires newly hired officers to complete at least 480 hours of approved basic training in categories including professionalism, legal instruction, defensive tactics

and use of force, weapons, and driver training. *See* 6 Va. Admin. Code § 20-20-21(B)(1). Officers must also satisfy testing requirements for the applicable performance outcomes. *Id.* § 20-20-70(B). And officers required to carry firearms must qualify annually. *Id.* § 20-30-80(A).

States also take varying approaches to subjects like public school curricula and election administration. In Virginia, school boards must implement the Standards of Learning or division-specific objectives that equal or exceed the Board's requirements, and local curricula must align with the Standards of Learning. *See* Va. Code § 22.1-253.13:1(B). The Virginia General Assembly in 2022 transformed the Commonwealth's approach to early literacy instruction. With the Virginia Literacy Act, the Commonwealth has sought to take a nationally leading role in improving early literacy outcomes through evidence-based instruction. The success of the Act depends on public school teachers effectively putting this approach into practice.

Similarly, the Commonwealth promotes a uniform approach to administration of elections. The State Board, through the Department of Elections, must ensure that electoral-board members are properly trained, conduct a certification program for general registrars, and set training standards and standardized programs for officers of election. Va. Code § 24.2-103(B)–(D).

On top of these specific state priorities, public employers must also impose basic workplace standards. Like any employer, states and localities must convey standards of professionalism, requirements to promote cybersecurity and protect sensitive

information, and expectations such as working hours and acceptable use of workplace equipment. For public employers, failures here can jeopardize public trust and waste public resources. Training is therefore an indispensable tool for achieving legitimate governmental ends.

Second, training helps public employees comply with the federal, state, and constitutional rules governing their work. State and local governments are subject to federal and state anti-discrimination requirements and, in Virginia, to the Commonwealth's OSHA-approved occupational-safety regime. Public employers also operate under constitutional constraints that do not apply to private employers.

The stakes are high given the unique roles government entities play. Public employees determine whether to approve an application for public benefits, use force when necessary to carry out law-enforcement duties, or decide whether someone is lawfully entitled to drive a motor vehicle. When things go wrong, a public employee's action may deprive a person of equal protection of the law, due process, or the right to be free of unreasonable searches or excessive force.

This Court has also recognized that, in some circumstances, the need for training can be so obvious that a municipality's failure to provide it may support liability under Section 1983. The use of firearms in the line of duty is perhaps the most striking example. "There is no reason to assume that police academy applicants are familiar with the constitutional constraints on the use of deadly force. And, in the absence of training, there is no way for novice officers to obtain the legal knowledge they require. Under

those circumstances there is an obvious need for some form of training.” *Connick v. Thompson*, 563 U.S. 51, 64 (2011).

But the Eighth Circuit’s en banc decision in *Henderson*—and the side of the circuit split it embraces—threatens to make effective public-employee training constitutionally perilous.

II. The decision below effectively erases the line between workplace instruction and First Amendment coercion.

A. The Eighth Circuit’s approach rejects decades of this Court’s guidance.

This Court has long admonished that the Constitution limits the federal judiciary to deciding “Cases” and “Controversies.” U.S. Const. art. III, § 2. Federal courts may not adjudicate a dispute simply because an issue is significant or hotly debated. *See Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013) (“The presence of a disagreement, however sharp and acrimonious it may be, is insufficient by itself to meet Art. III’s requirements.” (quoting *Diamond v. Charles*, 476 U.S. 54, 62 (1986))).

Instead, “a federal court may resolve only ‘a real controversy with real impact on real persons.’” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021) (quoting *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 87 (2019) (Gorsuch, J., concurring in the judgment)). Thus, we have the three familiar elements of Article III standing: injury-in-fact, traceability to the defendant’s conduct, and judicially redressability.

The Eighth Circuit departed from this Court’s guidance in two key respects.

First is the Court’s longstanding view of when chilled speech produces a cognizable injury-in-fact. A “subjective ‘chill’” on one’s First Amendment rights is “not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm.” *Laird v. Tatum*, 408 U.S. 1, 13–14 (1972). The Eighth Circuit turned this rule on its head. It treated respondents’ self-censorship as a present constitutional injury based on an “objectively reasonable” fear of negative consequences, even though neither respondent suffered discipline, loss of pay or credit, or any other adverse employment action for expressing disagreement. *See Henderson v. Springfield R-12 Sch. Dist.*, 163 F.4th 478, 494 (8th Cir. 2025). In doing so, the court allowed respondents’ reaction to the training to supply the injury without requiring a sufficiently concrete governmental threat of adverse consequences.

Second, this Court’s public-employment decisions recognize the substantial interest states have in managing their own workforces and carrying out government policy effectively. They have balanced the interest of the public employee “as a citizen, in commenting upon matters of public concern” with the “interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees.” *Garcetti*, 547 U.S. at 417 (quoting *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 568 (1968)). Indeed, “[g]overnment employers, like private employers, need a significant degree of control over their employees’ words and actions; without it, there would be little chance for the efficient provision of public services.” *Id.* at 418. And when employees speak in their professional capacities, government employers

have a particular need for “substantive consistency and clarity” in carrying out their missions. *Id.* at 422.

Those principles reinforce the importance of enforcing Article III’s threshold here. States must have room to explain their policies, ensure that employees understand them, and correct misunderstandings without transforming ordinary workplace management into a constitutional controversy. As this Court has recognized, “government offices could not function if every employment decision became a constitutional matter.” *Connick v. Myers*, 461 U.S. 138, 143 (1983). And permanent judicial interventions into the day-to-day operation of government workplaces would be “inconsistent with sound principles of federalism and the separation of powers.” *Garcetti*, 547 U.S. at 423.

The decision below threatens exactly that kind of judicial intrusion. By treating self-censorship during routine workplace training as a constitutional injury without a sufficiently concrete governmental threat, the Eighth Circuit invites First Amendment litigation over ordinary disagreement between public employers and their employees. This approach will “constitutionalize the employee grievance.” *Myers*, 461 U.S. at 154. And it does so at the expense of states’ sovereign interest in managing the public workforce through which they implement their laws and policies.

B. Chilled speech requires self-censorship tied to a credible governmental consequence.

The Eighth Circuit’s en banc decision lowers the bar for chilled-speech injury-in-fact below the floor set by the Constitution. *See Laird*, 408 U.S. at 13–14.

Self-censorship may describe a plaintiff's present reaction to government conduct, but it cannot by itself supply the governmental threat that Article III requires. As this Court explained in *Clapper*, a plaintiff cannot manufacture standing by altering her conduct in response to feared governmental action that is not sufficiently imminent. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 416 (2013). And in the First Amendment pre-enforcement context, this Court asks whether the plaintiff faces a "credible threat" of governmental enforcement. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014). The focus then must remain on what the government has done or credibly threatened to do and not simply on whether a plaintiff's decision to stay silent seems understandable.

The Eighth Circuit shifted that focus. It characterized the record as showing an "objectively reasonable credible threat of an adverse consequence." *Henderson*, 163 F.4th at 494. But the supposed threat arose from ordinary features of workplace training, like mandatory attendance, a requirement that employees act professionally, disagreement from trainers and coworkers, and a warning that employees who failed to act professionally could be asked to leave without credit. *Id.* at 484–87. From those facts, the court inferred that continued dissent could lead to removal, lost credit, or lost pay. *Id.* at 494–95. That inference allows the employee's apprehension to do precisely the work that Article III requires objective governmental conduct to do.

Workplaces across the nation expect employees to act professionally and to carry out their employer's

policies. Those ordinary expectations do not become a threat of punishment for protected dissent simply because the employee disagrees with the policy being taught.

The Eighth Circuit concluded that certain aspects of the school district trainings at issue showed “an objectively reasonable chilling effect.” *Id.* at 494. One was that the District’s training was mandatory, with the expectation that employees would act professionally while participating. *Id.* at 484–85, 487. The other was that trainers or fellow trainees expressed disagreement when the plaintiffs voiced their views. The court held that this pushback gave the plaintiffs a basis to believe that “the school district did not accept alternate viewpoints.” *Id.* at 487.

But neither circumstance objectively established that expressing a dissenting view would itself trigger discipline, removal, or loss of compensation. The District’s warning was tied to acting “professional,” not to expressing a particular viewpoint. *Id.* at 484. And respondents themselves repeatedly expressed views contrary to the training without losing credit, pay, or their jobs. The majority nevertheless treated the trainers’ disagreement with those views as evidence that further dissent might be deemed unprofessional and punished. *Id.* at 495. That leap is plain wrong.

An employer acts through its employees. So it achieves little for a state to adopt a policy if its employees are unable to carry it out. For example, uniform criteria for granting public benefits are meaningful only if public employees understand and apply those criteria. Requiring employees to participate in good faith in a training is a necessary

tool to ensure that public agencies can carry out a state's policies.

Similarly, if a public employee voices disagreement with state policy or a lack of understanding, it creates no injury-in-fact to “correct[]” the employee by explaining that her view differs from her employer’s policy. *Id.* at 487. A trainer must be able to say, candidly and even forcefully, “that is not our policy” or “that is wrong under governing law.” Otherwise, the state cannot meaningfully train employees to implement the law it is charged with administering.

The same is true of ordinary disagreement from others in the room. Article III cannot turn on whether a trainer or coworker responds warmly to an employee’s views. Disagreement may be uncomfortable, but the Constitution does not convert ordinary workplace friction into governmental coercion absent objective reason to believe the government will impose an adverse consequence for the employee’s speech.

As petitioners point out, the Eighth Circuit is not alone in its contrary approach. Other circuits likewise give substantial weight to non-disciplinary social or reputational pressures in the standing inquiry. The Eleventh Circuit is one example. It found an objective chill where a university policy exposed students to accusations of “negative” or “harmful” conduct and to tracking, monitoring, and a coordinated university response, even though the bias-response team lacked formal disciplinary authority. *Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1122–24 (11th Cir. 2022).

That approach makes Article III standing contingent on a plaintiff’s sensitivity to disagreement.

Americans are made of sterner stuff. This Court’s review is needed to reassert Article III’s boundaries.

C. Demonstrating understanding of government policy is different from personally affirming it.

The Eighth Circuit exacerbates the problem by turning attempts to verify employees’ comprehension of workplace policy into a constitutional minefield. The decision blurs a basic distinction: A state may require an employee to understand and correctly identify the policy she is expected to implement without requiring her to adopt that policy as her own personal belief.

In *Henderson*, one plaintiff complained about the online modules the school district required her to complete as part of the training program.² The opinion highlights two examples: One question required trainees to demonstrate that they understood that one policy, “Focus Area V,” was mandatory, not “suggested guidance.” *Henderson*, 163 F.4th at 486. Because the

² The Eighth Circuit also adopted a puzzling approach to compelled speech in its discussion of the training sessions in *Henderson*. The court appears to hold the training sessions compelled “accept[ance]” or “acquiesce[nce]” to the school district’s views. *Henderson*, 163 F.4th at 489, 495. But the court did not identify any compelled speech act or expressive conduct at those trainings. The Cultural Consciousness modules also included a more personal self-assessment and reflection exercise that Henderson was required to complete. *Id.* at 486–87. But unlike the credited policy questions, the District did not prescribe particular answers to those exercises. Henderson instead tailored her answers because she believed the District might review them. *Id.* That subjective concern does not establish that the District compelled her to express any particular message.

plaintiff did not wish to follow the school district's policy, she asserted that correctly identifying the policy was "compelled" speech. *Id.* A second question asked whether teachers should respond in real time to "racism and xenophobia in the classroom" or wait until after the moment has passed. *Id.* Based on her professional experience, the plaintiff believed it was more effective to wait to address problems in private. *Id.* She asserted that she was "compelled" to give an answer with which she disagreed. *Id.*

But in both instances, the module supplied a credited answer reflecting what the District required of its employees. The first expressly told Henderson that the credited answer represented "required policy and job responsibility." *Id.* at 486. The second similarly told her what conduct the District expected when an employee encountered racism or xenophobia in the classroom. *Id.* Requiring Henderson to select those answers to complete an employment training module did not attribute the District's policy to Henderson as her own personal conviction. It demonstrated, at most, that she knew the answer her employer required.

The First Amendment protects against government efforts to force a person to profess a belief or communicate a message as her own. *See Rumsfeld v. Forum for Acad. & Inst. Rts., Inc.*, 547 U.S. 47, 61–65 (2006). But an employee does not personally endorse every rule she accurately identifies on a workplace test or applies at work. A police officer who correctly identifies the department's use-of-force policy does not thereby announce that she would adopt the same policy if the choice were hers. Nor does a benefits administrator personally endorse every eligibility

criterion she is trained to apply. Knowledge is not agreement.

The Eighth Circuit nevertheless concluded that the module format “forced acceptance or adoption of the school district’s views” because Henderson could not proceed until she selected the credited answer. *Henderson*, 163 F.4th at 495. But that reasoning assumes the very point that must be established, that selecting an employer’s credited response expresses the employee’s own view rather than her understanding of the employer’s. If that were enough, nearly *any* mandatory comprehension check could become a compelled-speech injury whenever an employee personally disagrees with the rule being tested.

A second problem is that the Eighth Circuit saw compulsion in the fact that the plaintiff had to finish the modules “to get paid.” *Id.* But public employment necessarily involves requirements backed by compensation and continued employment. The fact that an employee must complete a job-related task does not convert every statement made in completing that task into an affirmation of personal belief. Any requirement from a public employer would thus seemingly satisfy a standard requiring compulsion to be more than “minimal” and not “wholly subjective.” *Id.* at 494; accord *Semple v. Griswold*, 934 F.3d 1134, 1143 (10th Cir. 2019).

This standard is unworkable. Under *Henderson*’s approach, it is unclear how a public employer could verify that its employees know what is expected of them. Even being asked to identify a workplace’s dress code could be a compelled-speech injury if an employee would prefer to wear jeans to the office. The

decision below conflates a run-of-the-mill comprehension check with compelled speech. Doing so “make[s] a federal case” out of simple dissatisfaction with workplace policy. *Henderson*, 163 F.4th at 497 (Colloton, C.J., dissenting).

The harmful consequences of the Eighth Circuit’s approach to compelled speech are readily apparent. For instance, numerous states require eligible voters to show certain forms of identification or attest to their identity before voting. Satisfactory identification varies widely from state to state. *See, e.g.*, Va. Code § 24.2-643(B) (requiring voters to verify their identity with certain forms of identification or a sworn statement). States accordingly often require training for a person to serve as an election official. *See, e.g.*, Va. Code § 24.2-115.2. Surely, some would-be poll workers believe that more—or fewer—forms of identification should suffice. Yet requiring an election official to correctly identify Virginia’s rule does not compel that official to endorse the rule. *Henderson* threatens to erase that distinction. That is a recipe for maladministration and mistakes.

There is no shortage of further examples. A prison must be able to verify that its correctional officers can identify the circumstances that warrant religious accommodations. *Cf.* U.S. Comm’n on Civ. Rts., *Enforcing Religious Freedom in Prisons* 104–05 (2025). A school district must be able to ensure that a teacher understands the district’s approach to literacy instruction. *Cf.* Va. Code § 22.1-253.13:1(H) (requiring school districts to provide specified “evidence-based literacy instruction”). A local police department must be able to verify that its officers know how to safely handle firearms. *Cf.* 6 Va. Admin. Code § 20-

30-80(A)(1) (establishing minimum passing score for annual firearms training). In each instance, the state must be able to demand knowledge and compliance without demanding personal agreement.

The First Amendment does not require federal courts to throw public services into disarray by impeding this common-sense practice. Indeed, Article III forbids it.

III. The decision below creates extraordinary uncertainty for states and warrants this Court's immediate review.

A. Public employers will face an impossible bind.

States confront an unwinnable dilemma due to the Eighth Circuit's watered-down standing requirements.

On one hand, training the public workforce becomes a wellspring of litigation risk and costly federal litigation. Under the decision below, an employee who disagrees with government policy may establish a constitutional injury by self-censoring when ordinary features of a mandatory training create what the employee perceives as a credible threat of consequences. And an employee who must select a credited answer on a required training module may claim a compelled-speech injury simply because she personally disagrees with the policy reflected in that answer.

The scale of that uncertainty is enormous. There are approximately 20.3 million state and local public employees nationwide. *Henderson* gives employees across that vast workforce a new basis to invoke federal jurisdiction over disputes arising from routine

workplace training. A public employer that persists in training its workforce therefore faces increased litigation costs and the possibility that ordinary training decisions will become constitutional cases. Local governments and individual officials may also face damages claims under Section 1983, while state officials may face suits for prospective relief and states may bear substantial defense and compliance costs. Even meritless claims can consume scarce public resources and exert substantial settlement pressure.

Conversely, a public employer might respond by leaving its employees without vital training. But this doesn't just deprive the public of effective government. It also opens the door to a different category of liability.

After all, when government acts, it must abide by constitutional and legal requirements. This duty extends to public employees. And plaintiffs may pursue injunctive and monetary relief when government employees violate those requirements in circumstances giving rise to governmental liability. As this Court has recognized, "the failure to provide proper training may fairly be said to represent a policy for which the city is responsible, and for which the city may be held liable if it actually causes injury." *City of Canton v. Harris*, 489 U.S. 378, 390 (1989). When equipping police officers with firearms, "the need to train officers in the constitutional limitations on the use of deadly force" is particularly clear. *Id.* at 390 n.10; see *Thompson*, 563 U.S. at 61. Although failure-to-train liability is deliberately demanding, see *Thompson*, 563 U.S. at 61–71, these cases underscore an obvious reality that states and localities sometimes

have compelling legal reasons to ensure that employees understand the rules governing their work. Inadequate training can mean more rights violations, more litigation, and more damages awards paid from the public fisc.

States have no easy way to avoid this Scylla and Charybdis of legal and operational liability. Attempting to continue trainings but invite participants' disagreement would be no solution. In concluding that respondents reasonably self-censored, the Eighth Circuit relied in part on trainers' responses to the plaintiffs' comments and what it characterized as an environment "openly hostile to opposing views." *Henderson*, 163 F.4th at 492–94. But trainers cannot be expected to remain silent when an employee states an incorrect understanding of governing law or workplace policy. Nor can public employers guarantee that every participant in an interactive training will welcome or refrain from challenging another employee's views.

That leaves public employers with no clear safe harbor. A state may invite discussion, only to have disagreement during that discussion cited as evidence of an objectively reasonable chill. It may test comprehension, only to have the credited answers characterized as compelled speech. Or it may retreat from meaningful training altogether, at the expense of effective administration and compliance with law. Article III should not put states to that choice.

Forcing states into this bind will have a few certain consequences. One is diverting public funds away from effective governance and toward legal fees. Another is miring federal courts in debates over human-resources policy. As this Court has cautioned,

it is not federal courts' role to engage in "an endless exercise of second-guessing municipal employee-training programs." *City of Canton*, 489 U.S. at 392. Beyond impressing federal courts into a task they "are ill suited to undertake" compared to the elected branches, doing so "would implicate serious questions of federalism." *Id.* *Henderson* invites precisely that sort of second-guessing before an employee has suffered any actual employment consequence and based on a standard that leaves public employers guessing which ordinary training practices may trigger federal jurisdiction.

B. The consequences of this decision are not limited to equity training or any particular viewpoint.

As explained above, the Eighth Circuit's decision will create serious uncertainty for public employers. That is reason enough to grant the petition for certiorari. And there is no principled way to cabin that uncertainty to the equity training at issue here, or to policies associated with any particular political or ideological viewpoint.

Public employees may disagree deeply with government policy across the ideological spectrum. A teacher may object to a school district's approach to race or gender. A police officer may disagree with restrictions on searches, arrests, or the use of force. An election official may believe that state voting rules are too strict or too permissive. But states must be able to train their employees on the policy the government has lawfully adopted, regardless of the employee's personal view.

The same problem arises with wholly non-ideological policies. Public employees may disagree with workplace rules concerning procurement, cybersecurity, benefits eligibility, vehicle pursuits, recordkeeping, or the use of government property. *Henderson's* reasoning does not depend on the subject of the training. If mandatory participation, correction of an employee's mistaken view, or a required comprehension check can supply the basis for a chilled- or compelled-speech injury, the resulting uncertainty follows public employers into training on every kind of government policy.

That viewpoint-neutral consequence is significant. A rule that burdens a state today when it trains employees on one set of policies will burden a differently elected government tomorrow when it adopts the opposite policies. Federal jurisdiction should not turn on which view the government has chosen to implement, or on whether a particular employee finds that view agreeable. States need a stable rule allowing them to explain and implement lawful policy while leaving employees free to hold contrary personal beliefs.

Nothing about that rule would insulate genuine First Amendment violations. A state may not force an employee to profess a personal belief simply because the government prefers it, nor may it credibly threaten unlawful punishment for protected speech. But *Henderson* obscures the line between those genuine constitutional injuries and the ordinary incidents of public employment, such as learning what government policy requires, being told when one's preferred approach conflicts with that policy, and

demonstrating an understanding of the rules one is employed to carry out.

That uncertainty will persist regardless of which party controls a state government, which policies it adopts, or whether the subject of a training is politically charged at all. The Court's review is needed to restore a workable and durable boundary between workplace instruction and First Amendment coercion.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JAY JONES	TILLMAN J. BRECKENRIDGE
<i>Attorney General</i>	<i>Solicitor General</i>

TRAVIS G. HILL	ETHAN P. FALLON
<i>Chief Deputy</i>	<i>Deputy Solicitor General</i>
<i>Attorney General</i>	<i>Counsel of Record</i>

KURT D. WALTERS
John Marshall Fellow

OFFICE OF THE ATTORNEY
GENERAL OF VIRGINIA
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071
SolicitorGeneral@oag.state.va.us