

September 23, 2026

by electronic filing

Honorable Scott S. Harris
Clerk of the Supreme Court of the United States

Re: *Sawicki v. Wilson*, No. 26-181

Dear Mr. Harris:

The petition referenced above was distributed for the October 9 conference. A petition pending in another matter raises the same underlying doctrinal and procedural concerns. Their common issue is whether judicially created immunity doctrines have been extended beyond their historical and statutory foundations in a manner that defeats the remedial and deterrent purposes that Congress intended for Section 1983. Each petition addresses a violation of First Amendment rights accomplished indirectly through a third party. In both cases, claims were dismissed prior to discovery. Both petitions ask the Court to clarify its doctrine of qualified immunity in the context of retaliation for protected speech. This may warrant coordinated consideration.

The petition in *DeLanis v. Baker, Donelson* (No. 26-21) argues that an expansion of qualified immunity frustrates the purpose of Section 1983. In that matter, a private law firm discharged an employee under pressure from a city whose property tax increase the man had opposed. The Sixth Circuit found the firing to be impermissible retaliation, but it held that the firm had qualified immunity from suit since no precedent “clearly established” that a private firm violates the First Amendment by retaliating against someone in response to government threats. Petitioner DeLanis contends that stretching the doctrine to cover private interests defeats the statutory purpose. This eases the way for government actors to enlist private firms in future retaliatory schemes.

The petition in *Sawicki v. Wilson* observes that a circuit’s qualified immunity rulings will define its pleading standard for similar claims going forward. Where the retaliatory act itself is speech, it *may be* Constitutionally protected. *If it is*, then the courts of appeals seldom find the Constitutional injury to be actionable. Consequently, they will develop no “clearly established” precedent that retaliation in the form of *protected* speech offends the Constitution. Hence, qualified immunity for retaliatory speech is broadly framed; and that in turn leads to more stringent pleading standards. But, the Third Circuit alone extends qualified immunity to *all* retaliatory speech, even defamation and deception. That expansion of qualified immunity yields a pleading standard for retaliation that frustrates the purposes of Section 1983 and fosters corruption, as the petition argues.

Please bring these common features to the attention of the Court. Thank you kindly.

Respectfully submitted,



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