No. 26-522

IN THE

Supreme Court of the United States

SAM INENDINO

Petitioner,

v.

ANNETTE NANCE-HOLT, ET AL.

Respondents.

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

BRIEF OF THE ILLINOIS COUNCIL OF POLICE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The **Illinois Council of Police** ("ICOPs") is a labor union representing public-safety employees across the State of Illinois—most of them sworn law enforcement officers—organized into more than ninety collective bargaining units, two of which consist of employees of the City of Chicago's Department of Aviation.

Amicus's members work under the same or similar off-duty conduct and social-media rules the City enforced against Petitioner. Specifically, the City discharged Petitioner under, among other provisions, Personnel Rule XVIII and Fire Department General Order 20-002, which permits employees to speak "as private citizens in matters of public concern" only if their speech does not, among other things, "[u]ndermine public trust or confidence in the Department." Pet.App.6a–7a & n.1. Personnel Rule XVIII governs City employees generally, including the ICOPs members employed at the Department of Aviation. The "public trust" clause is boilerplate in law-enforcement social-media policies across the country. *See, e.g.*, *Liverman v. City of Petersburg*, 844 F.3d 400, 404 (4th Cir. 2016) (invalidating as overbroad a social-networking policy that permitted officers to comment on public issues only so long as their comments did not, among other things, undermine "public confidence in the officer").

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[1] Pursuant to Rule 37.6, counsel for *amicus* affirms that no counsel for any party authored this brief in whole or in part, and no person or entity, other than *amicus*, its members, or its counsel, made any monetary contribution intended to fund its preparation or submission. Counsel of record for all parties received timely notice of *amicus*'s intention to file this brief.

Under the decision below, a public agency may fire any of its employees for off-duty speech on a matter of public concern based upon nothing more than a prediction or supposition that *any* member of the public who saw it *might* lose "trust" in the agency's apolitical operation. While *Amicus* takes no position on the content of Petitioner's posts, its interest lies in the evidentiary standard applied to its members' speech in like circumstances. ICOPs thus writes to ensure that any of its members who might find themselves in a situation similar to Petitioner's will have every opportunity to practice, preserve, and defend their constitutional rights to the fullest, without fear of termination or other professional opprobrium.

INTRODUCTION AND SUMMARY OF ARGUMENT

In October 2019, two unidentified members of the public complained to Chicago's Office of Inspector General ("OIG") about two comments Petitioner Sam Inendino, a firefighter with the Chicago Fire Department ("CFD"), had left on other people's Facebook pages. Pet.App.4a–5a; Pet. 6, 20. The OIG opened an investigation and began reviewing and preserving posts from his Facebook page—and continued doing so until at least January 2021, Pet. 6—and the City terminated him effective June 9, 2021, roughly twenty months after the complaints were filed. Pet.App.6a.

The Seventh Circuit held that the City had offered no evidence "that demonstrates a disruption or even a reasonable threat of a disruption," Pet.App.24a, but that the City's public-trust interest made the third *Pickering* factor weigh "decidedly in the City's

favor"—concluding, without citing any evidence of actual erosion, that Petitioner's posts had "eroded the public's trust in the CFD as a whole," Pet.App.29a. The record contains no evidence that any resident of Englewood, where Petitioner worked out of Engine 54, ever saw a single one of the thirteen posts the OIG's report addressed. The Seventh Circuit erred in at least three crucial respects.

First, the panel's public-trust holding rests on a line of cases—*Kokkinis v. Ivkovich*, 185 F.3d 840 (7th Cir. 1999), *Schneiter v. Carr*, 148 F.4th 438 (7th Cir. 2025), *Locurto v. Giuliani*, 447 F.3d 159 (2d Cir. 2006), and behind *Locurto*, *Pappas v. Giuliani*, 290 F.3d 143 (2d Cir. 2002)—in which the court had before it some *actual* evidence of how the public or the workforce had reacted to the speech: a television broadcast, a newspaper story, a parade that drew immediate, extensive press coverage in New York City. *Waters v. Churchill*, 511 U.S. 661 (1994), meanwhile, requires an employer acting on its own account of the facts to have investigated them reasonably—a standard hardly met by OIG's failure to look for, let alone find, any actual public outcry from Petitioner's remarks.

Second, a public-trust clause applied without evidence invites selective or politically motivated enforcement. Too often, public agencies have invoked their "public trust" and "reputation" as nebulous grounds to discipline officers who criticized internal practices, scoffed at misguided reform efforts, and even forwarded racist images to a colleague in order to *disapprove* of them. That risk falls hardest on police officers, for whom *Garcetti* has already made off-duty speech the principal protected channel for criticizing their own departments. The City's decision to terminate Petitioner rested on a report that

catalogued what he had said without asking whether anyone in Englewood had seen it.

Third, public trust is measurable, and the City made no attempt to quantify it here. Petitioner was a firefighter, but the City already tracks the public's trust in its police officers, district by district and month by month, and publishes the results for Englewood along with the rest. Nothing stopped the Fire Department, or the Inspector General who investigated Petitioner, from looking for the same evidence here.

Instead, the City acted on two complaints from people whose identities were not disclosed, and it took twenty months to do so—longer than several state legislatures allow before they bar comparable discipline of officers and firefighters. Police officers face a further hazard, because controversy in the law-enforcement context often begets more controversy: publicizing the termination of an officer for controversial speech because of its "harm" to the agency's "public trust" becomes a self-fulfilling prophecy, as the termination itself produces the very publicity the removal is ostensibly intended to avoid.

ARGUMENT

I. THE RULING BELOW DISREGARDS THE EVIDENTIARY STANDARD ITS OWN CONTROLLING PRECEDENT REQUIRES

A. The Panel Relied Upon Caselaw Almost Exclusively Involving a *Record* of Public Reaction

Borrowing from *Kokkinis*, the Seventh Circuit observed that police departments "function as paramilitary organizations charged with maintaining

public safety and order." Pet.App.27a (quoting *Kokkinis*, 185 F.3d at 845) (citation omitted). From *Schneiter*, that "*Pickering* caselaw gives special solicitude to public employers in the law-enforcement and correctional contexts" and that "[a] public employer's reputational interests are a valid part of the balancing inquiry." Pet.App.27a (quoting *Schneiter*, 148 F.4th at 448–49). It then extended both to firefighters, whom *Locurto* describes as "quintessentially public servants" whose service includes "safeguard[ing] the public's opinion of them." 447 F.3d at 178–79; Pet.App.28a.

None of the cases the Seventh Circuit cited for its chief holding involved an agency that merely predicted the public's reaction to a public servant's speech—or, where one did, the agency acted so quickly that no ulterior motive for the discipline could be inferred. *Kokkinis*, for its part, involved an officer who criticized his own chief during a television news broadcast, with the court pointing to record evidence of the broadcast's actual effects on his superiors' and co-workers' confidence in him and on the department's standing in the surrounding communities. 185 F.3d at 842–43, 845–46 (noting that the broadcast "damaged his superiors' and fellow officers' confidence in him" and "adversely affected harmony and loyalty among co-workers"). In *Schneiter*, meanwhile, a local newspaper ran a story under the headline "Deputy Prison Warden Posts Facebook Meme that Compares Muslim Children to Garbage," and the department placed the deputy warden on leave the very same day. 148 F.4th at 443; Pet.App.24a–25a. The panel itself called *Schneiter* "markedly different" when it rejected the City's workplace-disruption argument, because the department there acted the day the story ran, while here twenty months passed without incident.

Pet.App.24a–25a. Even *Craig v. Rich Township High School District 227*, which the panel below found "reminiscent" of this case, involved a superintendent's letter citing "concerns from members of the School District community" about the counselor's book—some evidence, at least, of an actual community reaction. 736 F.3d 1110, 1115, 1119–20 (7th Cir. 2013); Pet.App.28a–29a.

Whatever one thinks of how these courts weighed public opinion, it is inarguable that each made something of a searching inquiry. The Seventh Circuit panel not only forwent such an inquiry but treated none as necessary where "public trust" is at stake. The Seventh Circuit cannot at once hold that a prediction of *disruption* must be grounded in evidence, Pet.App.24a–26a (citing *Gustafson v. Jones*, 290 F.3d 895, 911 (7th Cir. 2002)), but that a prediction of eroded *public trust* requires no such thing. The circuits that require "record evidence connecting actual or reasonably threatened disruption to government operations," Pet. i, would not have sustained Petitioner's termination. The Eighth Circuit, faced with jammed phone lines and residents calling for the firefighter's removal, still reversed summary judgment for the city on a fired firefighter's claim and left the reasonableness of the city's predictions to a jury, because "there was no showing that [his] post had an impact on the fire department itself"—that is, its operations. *Melton v. City of Forrest City*, 147 F.4th 896, 901–04 (8th Cir. 2025). The Fourth Circuit, meanwhile, sustained a battalion chief's termination, but on a record of Department employees saying they no longer trusted him and of concerns that his subordinates would not take him seriously. *Grutzmacher v. Howard County*, 851 F.3d 332, 345–47 (4th Cir. 2017).

This Court has long recognized that a civil servant's public-facing role bears on the employer's interest. *Rankin v. McPherson*, 483 U.S. 378, 390–91 (1987) ("[S]ome attention must be paid to the responsibilities of the employee within the agency."). But *Rankin* is distinguishable. There the Court considered a clerical public employee who served in "no confidential, policymaking, or public contact role," and so had no occasion to decide how much weight such a role should carry. *Id.* at 390–91.

What the Court *did* decide is that an employee's role bears on the weight of the employer's interest in what that employee says outside of work. It does not relieve the employer of the burden of showing that the speech actually harmed, or reasonably threatened, that interest. Even after noting McPherson's limited responsibilities, the Court looked to the record for evidence that her remark had interfered with the office's functioning or "discredited the office," and found none. *Id.* at 388–89. The panel below took the first point from *Rankin* and left the second behind, treating Petitioner's public-facing role as proof of the harm itself.

B. *Waters* Requires a Reasonable Inquiry Into Actual Harm

In *Waters*, the plurality held that courts must look to "the facts as the employer reasonably found them to be," 511 U.S. at 677, and it measured reasonableness by how the investigation is actually conducted rather than merely constructed. To wit, that the employer's conclusions must be reached in good faith and "[o]nly procedures outside the range of what a reasonable manager would use may be condemned as unreasonable." *Id.* at 677–78. The plurality found the managers' belief reasonable

because they had interviewed the nurse to whom Churchill spoke and the nurse who reported the conversation, and it remanded only to determine whether the managers in fact fired her for those statements rather than for her nondisruptive criticism of hospital policy. *Id.* at 665–67, 679–82. Nothing in the opinion or the petition suggests that the OIG interviewed anyone in the department about the effect of Petitioner's speech.

When the predicted harm is public distrust, an agency can do much to measure and demonstrate this likely outcome without guessing. It can check its own complaint logs, its call data, its community-meeting minutes. It can ask the officers and firefighters who work in the district whether residents have mentioned it. It can scan comments on municipal social media pages to see if anyone in the community is discussing the remarks. Public agencies regularly conduct this sort of public-relations monitoring as a matter of course. Indeed, Chicago does this already, at least for its police officers.

Since December 2020, the Chicago Police Department has published monthly trust and safety scores for each of its twenty-two police districts—Englewood among them—built from resident surveys conducted with an outside research firm. Press Release, Chi. Police Dep't, *Chicago Police Department Launches Online Dashboard Tracking Public Sentiment on Trust in the Police and Community Safety* (Dec. 10, 2020) (https://tinyurl.com/kydpxrmd) (last visited Oct. 29, 2026). The City could easily have its Fire Department commission the same kind of standing public-opinion survey.

The OIG skipped all of these steps and more. It received two complaints about two comments, then

reviewed and preserved posts from Petitioner's account for more than a year, Pet. 6, cataloging thirteen apparently problematic posts made between April and October 2020, and then wrote a report concluding that "[a]ny minority resident of the City, who was exposed to the content on Inendino's public Facebook page, could reasonably question whether he would deliver the appropriate level of care." Pet.App.5a. Yet the report does not identify a single resident who was exposed to the content. Nothing in the opinion's account of the report suggests that the OIG interviewed anyone at Engine 54, any patient Petitioner would have treated, or anyone in Englewood, for that matter. It investigated the speech. It did *not* investigate the speech's measurable effect (or lack thereof), which is the *only* thing the City's interest as employer could attach to under a proper reading of "public trust." *See Pickering v. Board of Education*, 391 U.S. 563, 572–73 (1968) (speech protected where it was "neither shown nor can be presumed to have in any way either impeded the teacher's proper performance of his daily duties in the classroom or to have interfered with the regular operation of the schools generally"). An employer that has examined *only* the content of the speech in issue is not making a prediction about operations or reputation at all.

The timing of Petitioner's termination doubly confirms this. In *Connick v. Myers*, this Court held that an employer need not "allow events to unfold to the extent that the disruption of the office and the destruction of working relationships is manifest before taking action." 461 U.S. 138, 152 (1983). That rationale assumes an employer acting quickly to head off harm. The City did the opposite. It let the speech continue, and the investigation run, for the better part

of two years—time enough for any loss of trust in Englewood to reveal itself. *See Gustafson*, 290 F.3d at 911 ("[W]here, as here, substantial time has passed without incident, it naturally becomes more difficult for an employer to satisfy its burden of proving that punishment on the basis of anticipated disruption was reasonable.").

C. The Evidence the Panel Said Would Have Sufficed Would Suffice in *Every* Case

A standard satisfied via testimony that could be offered in *every* case involving the same kind of content ratifies the employer's view of the content. It does not measure its external impact. This is precisely the kind of pretense this Court forbade in *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (speech on public issues "cannot be restricted simply because it is upsetting or arouses contempt"), and in *Rankin*, 483 U.S. at 387 ("inappropriate or controversial character of a statement is irrelevant" to whether it addresses a matter of public concern).

When searching for evidence, courts do not have much trouble finding it—where it exists. In *Bennett v. Metropolitan Government of Nashville & Davidson County*, for example, the record showed that the controversy surrounding a 911 dispatcher's election-night Facebook comment repeating a racial slur led to days of "nonstop conversation" in the office, reduced communication among dispatchers, and left coworkers questioning whether they could rely on the speaker in their work and whether she would fairly assist their families when they called for help. 977 F.3d 530, 532–35, 540–41 (6th Cir. 2020). In *Hedgepeth v. Britton*, the school district received 113 emails about a teacher's posts, and its operations were thrown into "disarray." 152 F.4th 789, 796–97 (7th

Cir. 2025). In *Grutzmacher*, one employee said, "I don't want to work for [Plaintiff] anymore. I don't trust him." 851 F.3d at 346.

Where the employer offered only its own forecast, courts have declined to resolve the balance in the employer's favor. *Moser v. Las Vegas Metropolitan Police Department*, 984 F.3d 900, 909–12 (9th Cir. 2021) (holding that factual disputes precluded summary judgment where a department transferred a SWAT officer over a Facebook comment that drew no media coverage and that only an anonymous tipster was shown to have seen). Nor does a public-facing position tip the balance where "no patron had complained about—or apparently even seen—the post." Pet. 13 (describing *Noble v. Cincinnati & Hamilton County Public Library*, 112 F.4th 373, 385 n.5 (6th Cir. 2024)). Departments, meanwhile, have invoked the same reputational interest against officers on every side of these debates.

- Officers who criticized their own department. In *Liverman*, two Petersburg officers were reprimanded and placed on probation for a Facebook exchange criticizing the department's practice of placing inexperienced officers in specialty and instructor positions, under a policy that barred postings that would "tend to discredit or reflect unfavorably upon the [Department]." 844 F.3d at 404–06. The Fourth Circuit held the policy unconstitutionally overbroad and the discipline unlawful because the department showed no meaningful disruption. *Id.* at 407–09, 411.
- An officer who condemned racist content. In *Adams v. County of Sacramento*, the Rancho Cordova police chief alleged she was told to

resign or face public termination over a private 2013 text exchange in which she forwarded to a colleague two racist images she said an unidentified sender had sent her, adding a note of exasperation; the messages surfaced seven years later during an internal investigation. 143 F.4th 1027, 1031–32 (9th Cir. 2025), cert. denied, No. 25-672 (U.S. Feb. 23, 2026). The Ninth Circuit did not reach Pickering, holding the texts were not speech on a matter of public concern. Id. at 1034, 1038. The point for present purposes is what the department did with them.

- An officer who criticized a reform bill. In *Hussey v. City of Cambridge*, a veteran officer received a four-day suspension for an off-duty post, removed within hours, criticizing the decision to name a federal police-reform bill after George Floyd; a divided panel sustained the discipline on the department's prediction of harm to community trust. 149 F.4th 57, 63–64, 71–75 (1st Cir. 2025). The First Circuit has since granted rehearing en banc and vacated the panel decision. 165 F.4th 638 (1st Cir. 2026).
- Officers who posted about everything. In *Fenico v. City of Philadelphia*, officers disciplined after a third-party database cataloged their posts challenged discipline for speech spanning "race and ethnicity; religion . . . ; immigration . . . ; protests and protestors; and policing, crime, and punishment." 755 F. Supp. 3d 602, 623–24 (E.D. Pa. 2024); *see Fenico v. City of Philadelphia*, 70 F.4th 151 (3d Cir. 2023) (reversing dismissal of officers' retaliation

> claims where the City's forecasts of disruption lacked record support). *See generally* Maeve Hickey, *Posts by Police: Disciplining Law Enforcement for Speech on Social Media*, 15 Wake Forest L. Rev. Online 97 (2025).

The OIG concluded that "*[a]ny* minority resident . . . could reasonably question" whether Petitioner would deliver appropriate care. Pet.App.5a (emphasis added). But swap the content and the audience and one quickly sees the danger in a standard that relies solely on viewpoints instead of outcomes. Wouldn't any resident who vociferously *supports* the police reasonably question the "trust" placed in an officer who posted in favor of an anti-police rally (as odd as that sounds), against qualified immunity, or in favor of cutting the department's budget? A standard that supports either result with equal ease leaves the choice to the employer, which can then easily devolve into punishing viewpoints it disfavors while ignoring those it supports. That is the danger Justice Thomas identified when he warned that public employers "may find it convenient" to restrict "disfavored or unpopular speech in the name of preventing disruption." *MacRae v. Mattos*, 606 U.S. 937, 942 (2025) (statement of Thomas, J., respecting the denial of certiorari) (quoting *Dodge v. Evergreen Sch. Dist. #114*, 56 F.4th 767, 786 (9th Cir. 2022)).

Pickering permits added restrictions on public-employee speech only because the government acting as employer has an interest in "promoting the efficiency of the public services it performs through its employees." 391 U.S. at 568. When the employer's asserted interest is the public's reaction to a viewpoint, that interest is distinguishable from the sovereign's forbidden interest in suppressing the

viewpoint *only* if it is tied to an actual effect on the service. Evidence provides the distinction between those legitimate and forbidden interests.

II. AFTER *GARCETTI*, OFF-DUTY SPEECH IS THE PRINCIPAL CHANNEL THROUGH WHICH OFFICERS CAN STILL SPEAK THEIR MINDS

Petitioner observes that public employees bring firsthand knowledge to public debate. Pet. 27 (citing *Pickering*, 391 U.S. at 572, and *United States v. National Treasury Employees Union*, 513 U.S. 454, 465–66 (1995)). This Court has acknowledged as much, noting that "[g]overnment employees are often in the best position to know what ails the agencies for which they work." *Lane v. Franks*, 573 U.S. 228, 236 (2014) (quoting *Waters*, 511 U.S. at 674). For police officers, the practical question is where that knowledge can be expressed. *Garcetti v. Ceballos* removes from First Amendment protection everything an officer says "pursuant to [his] official duties." 547 U.S. 410, 421 (2006). An officer's reports, internal objections, and testimony given as part of his ordinary duties all fall on that side of the line, and what he says on duty that is not part of his job is constrained by a paramilitary chain of command that the Seventh Circuit treats with "special solicitude." Pet.App.27a. *See* Sarah F. Suma, *Uncertainty and Loss in the Free Speech Rights of Public Employees Under* Garcetti v. Ceballos, 83 Chi.-Kent L. Rev. 369 (2008) (describing how *Garcetti* discourages employees from reporting wrongdoing through the chain of command).

That leaves off-duty speech as the principal outlet for police officers to express their opinions. Under the decision below, an officer who posts under his own name criticizing one of his department's policies risks termination for undermining public confidence

without any evidence that those posts had any effect on the public's confidence in his department.

The problem is sharper still for officers who speak through their unions, and for the union officials who speak for them. Police unions are among the most frequent public critics of their own departments—of staffing levels, overtime and deployment practices, and misguided disciplinary actions. *See generally* Catherine L. Fisk & L. Song Richardson, *Police Unions*, 85 Geo. Wash. L. Rev. 712 (2017). That criticism is made by sworn officers, usually off duty, often under their own names and titles, and is designed to persuade public opinion as a means of effecting internal reforms. If a prediction that speech will "[u]ndermine public trust or confidence in the Department" is enough to discharge the speaker, Pet.App.7a n.1, then a department could reach nearly any public criticism an officer or his union makes. The decision below supplies no limiting principle to ensure officers and other public servants feel free to speak their minds.

III. TERMINATING A PUBLIC SERVANT FOR OFF-DUTY SPEECH ON "PUBLIC TRUST" GROUNDS REQUIRES THAT AN AGENCY DEMONSTRATE ACTUAL DAMAGE

A. Public Trust *Is* Measurable

The panel treated public trust as something a court should *presume* will erode whenever a firefighter—or, under the police cases from which the panel drew its rule, an officer—says something others could view as controversial. But no court need rely on heuristics, least of all where police officers are concerned. Public trust in law enforcement is among the most frequently measured attitudes in American

life, and the national numbers move with national events, not with any one officer's posts. Gallup has asked Americans about their confidence in the police every year since 1993. Confidence stood at 64% in 2004. Megan Brenan, *U.S. Confidence in Institutions Mostly Flat, but Police Up*, Gallup (July 15, 2024). It fell to 48% in 2020, reached a record low of 43% in 2023, rebounded to 51% in 2024, and stood at 45% in both 2025 and 2026. Megan Brenan, *Democrats' Confidence in U.S. Institutions Sinks to New Low*, Gallup (July 17, 2025); Gallup, *Confidence in Institutions* (topline, June 1–15, 2026), https://news.gallup.com/file/poll/712667/2026_06_01%20Topline_Confidence.pdf; Brenan, *U.S. Confidence in Institutions Mostly Flat*, *supra*. Departments regularly survey their communities, track complaints, and monitor their own standing. When a department says an officer's or a firefighter's speech has cost it some of the public's trust, it is making a factual claim of a kind it is well equipped to substantiate. It should be required to substantiate that claim—or at least to try—before deciding on termination. *See* President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* 16 (2015) (recommending that agencies "track the level of trust in police by their communities just as they measure changes in crime" through annual community surveys); Chi. Police Dep't Press Release, *supra*.

In 2019, the Plain View Project published a database of Facebook posts by officers in several departments across the country. Emily Hoerner & Rick Tulsky, *Cops Across the US Have Been Exposed Posting Racist and Violent Things on Facebook. Here's the Proof*, BuzzFeed News (June 1, 2019), https://www.buzzfeednews.com/article/emilyhoerner/

police-facebook-racist-violent-posts-comments-philadelphia. As a result of what the Project "exposed," Philadelphia alone placed seventy-two officers on desk duty and announced that thirteen would be fired. *13 Philly Cops to Be Fired After Investigation Into Facebook Posts*, Philadelphia Magazine (July 18, 2019). In Phoenix, the Project led to *Hernandez v. City of Phoenix*, where the department opened an internal investigation into memes a sergeant had posted—some five years before the Project published them—and concluded that they "potentially reduced or contributed to the erosion of public trust." 43 F.4th 966, 973–74 (9th Cir. 2022). Nothing in either account suggests that the department measured how the posts had affected its standing in the communities its officers served. Each treated the Project's publication, years after many of the posts went up, as the injury itself. *See* Hickey, *supra*.

In *Pappas*, Judge Sotomayor observed that "whatever disruption occurred was the result of the police department's decision to publicize the results of its investigation," and that "[i]t was, apparently, the NYPD *itself* that disclosed this information to the media and the public." 290 F.3d at 159 (Sotomayor, J., dissenting) (emphasis added). She invoked this Court's warning that "[a]t some point, such concerns are so removed from the effective functioning of the public employer that they cannot prevail over the free speech rights of the public employee." *Id.* (quoting *Rankin*, 483 U.S. at 391). The decision below only invites more of these self-fulfilling prophecies.

B. State Legislatures Already Treat Delayed Discipline of Officers and Firefighters With Due Suspicion

The Tenth Circuit has held that once enough time passes, an employer must show actual disruption to operations rather than continue to rely on prospective damage thereto. *Kent v. Martin*, 252 F.3d 1141, 1144 (10th Cir. 2001) (holding that "[s]ix months after the employees' expression, a so-called 'prediction' of disruption would be meaningless"); *see Duda v. Elder*, 7 F.4th 899, 912–13 (10th Cir. 2021). The Seventh Circuit acknowledged the same principle for *internal* workplace disruption, Pet.App.25a (quoting *Gustafson*, 290 F.3d at 911), but then used "public trust" to almost wholly exempt public-safety agencies from *Gustafson*'s analysis. State legislatures have drawn the Tenth Circuit's inference in statutory form, and several of them apply it to exactly the employees at issue here:

- California bars punitive action against a public safety officer if the investigation "is not completed within one year of the public agency's discovery" of the alleged misconduct. Cal. Gov't Code § 3304(d)(1). California extends the same one-year rule to firefighters. Cal. Gov't Code § 3254(d).
- Florida bars "disciplinary action, suspension, demotion, or dismissal" of a law enforcement or correctional officer "if the investigation of the allegation or complaint is not completed within 180 days" after the agency receives notice of it. Fla. Stat. § 112.532(6)(a).
- Texas forbids a civil-service city's department head, in suspending a firefighter or police

officer, from complaining "of an act that occurred earlier than the 180th day preceding" the suspension, except for acts related to criminal activity. Tex. Loc. Gov't Code § 143.052(h).

- New York bars disciplinary proceedings against covered civil-service employees, including many officers and firefighters, "more than eighteen months after the occurrence of the alleged incompetency or misconduct," absent a crime. N.Y. Civ. Serv. Law § 75(4).

These statutes reflect a legislative judgment that, after a fixed period, the employer's interest in discipline for a given act has weakened enough that the employee's interest in repose prevails. Many police collective-bargaining agreements impose comparable limits on the length of internal investigations. *See* Stephen Rushin, *Police Union Contracts*, 66 Duke L.J. 1191, 1220 (2017) (cataloguing contract provisions that bar disciplinary action "if too much time has elapsed since its alleged occurrence, or since the initiation of the investigation"); *see also* Kevin M. Keenan & Samuel Walker, *An Impediment to Police Accountability? An Analysis of Statutory Law Enforcement Officers' Bills of Rights*, 14 B.U. Pub. Int. L.J. 185 (2005). The statutes also reflect the commonsense premise underlying *Kent* and *Gustafson*—that damage to an agency's operations or to its standing with the public is either demonstrable or not.

These statutes are also calibrated to the legitimate reasons an investigation may run long. Florida tolls its limitations period while a related criminal investigation or prosecution is pending, when the officer is unavailable, and, at the agency's

option, during a declared state of emergency. Fla. Stat. § 112.532(6)(a). Texas measures its period from discovery rather than occurrence where the act is related to criminal activity. Tex. Loc. Gov't Code § 143.052(h). California tolls its one-year period during a related criminal investigation and in several other enumerated circumstances. Cal. Gov't Code § 3304(d)(2). Legislatures, in other words, have identified the justified grounds for delay. An agency's wish to keep watching an employee's social-media account to build a stronger case against him is not one of these. Here, Chicago did not need time to coordinate with prosecutors or wait for an unavailable witness; it needed only to read posts that were public the day they were made. The panel nonetheless gave the delay no weight on the public-trust side of the scale, even after holding that the same delay defeated the City's prediction of workplace disruption. Pet.App.25a.

Whether or not Petitioner's posts were offensive, the City had twenty months from the first complaint, and eight months from the last of the thirteen posts, to measure the effect of that speech, and the court of appeals found no evidence of *disruption*. If the public-trust interest can prevail where disruption fails for lack of evidence, then the former can prevail on any record—or, as this case shows, on mere speculation alone. The decision below is thus in direct contradiction to *Pickering*, *Rankin*, and *Waters* and threatens the already limited free-speech rights of public servants nationwide, beginning with the employees—police officers and firefighters—whose speech about public safety the public most needs to hear.

CONCLUSION

For the foregoing reasons, and those set forth in the Petition, the Court should grant review and reverse the Seventh Circuit ruling below.

Respectfully submitted,

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