26-5981

No. _____

ORIGINAL

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SUPREME COURT, U.S.

IN THE
Supreme Court of the United States

LYNN M. KIPP,
Petitioner,

v.

BELLEFONTE AREA SCHOOL DISTRICT; BOARD OF SCHOOL DIRECTORS OF THE BELLEFONTE AREA SCHOOL DISTRICT; MICHELLE SAYLOR; MICHELLE SIMPSON; KIMBERLY SHARP; NICOLAS DOWNS; NICOLE HARRIS; and MICHAEL MUSSETT,
Respondents.

On Petition for a Writ of Certiorari to the
Commonwealth Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Within weeks of reporting concerns about state-mandated testing violations, a tenured, distinguished-rated public school teacher was suspended and told she was found to have violated several unlawful harassment policies. From the outset, she asked who had accused her and what she was alleged to have said or done. Her school district refused this information by calling the matter "confidential" under the policy. HR's report—given to her eight months later—indicated names of complainants and allegations that were unrelated to the unlawful harassment policy. Within that year she was suspended four times, again without names of her accusers or evidence or information of what she said or did wrong. Nevertheless, the state courts held that the meetings at which she was refused that information gave her due process, and they dismissed her § 1983 complaint on the pleadings. The questions presented are:

1. Whether, when a public employer suspends a tenured employee without pay, here indefinitely and now for more than seven years, on the strength of coworkers' accusations, the pre-suspension "notice of the charges" and "explanation of the employer's evidence" required by *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546 (1985), and applied to suspensions in *Schmidt v. Creedon*, 639 F.3d 587 (3d Cir. 2011), must disclose who the accusers are and what the employee is alleged to have said or done wrong; and whether meetings at which the employer withholds both, citing a local confidentiality policy, satisfy due process under the Fourteenth Amendment.

2. Whether it violates the First and Fourteenth Amendments for a public employer to invoke a harassment policy's confidentiality clause both to withhold from an employee the identity of her accusers and the substance of the accusations, and to forbid and punish her efforts to gather witnesses and character evidence in her own defense, and then for state courts to seal from the public record the

allegations unrelated to the unlawful harassment policy.

3. Whether a court may dismiss her retaliation and association claims on the pleadings by treating the employer's own charging document as proof that it would have acted anyway, contrary to *Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977).

4. Whether a state court may dismiss a public employee's § 1983 due process claims as untimely under a state open-meetings statute's 30-day limit, or because a union-controlled grievance arbitration was incomplete, when this Court has held that § 1983 claims are governed by the State's general personal-injury limitations period, *Owens v. Okure*, 488 U.S. 235 (1989), and may not be conditioned on state exhaustion or notice requirements, *Patsy v. Board of Regents*, 457 U.S. 496 (1982); *Felder v. Casey*, 487 U.S. 131 (1988).

PARTIES TO THE PROCEEDING

Petitioner Lynn M. Kipp was the plaintiff in the trial court and the appellant and petitioner below.

Respondents are the Bellefonte Area School District; the Board of School Directors of the Bellefonte Area School District; Michelle Saylor, former Superintendent; Michelle Simpson, Director of Human Resources; Kimberly Sharp; Nicolas Downs; Nicole Harris; and Michael Mussett. All were defendants in the trial court and appellees and respondents below.

RELATED PROCEEDINGS

Court	Docket No.	Disposition	Date
Supreme Court of Pennsylvania	No. 2 MAL 2026	Petition for allowance of appeal denied	July 28, 2026
Commonwealth Court of Pennsylvania	No. 263 C.D. 2023	Application for reargument denied	December 3, 2025
Commonwealth Court of Pennsylvania	No. 263 C.D. 2023	Affirmed in part, vacated in part	October 7, 2025
Commonwealth Court of Pennsylvania	No. 938 C.D. 2020	Appeal quashed as interlocutory	October 5, 2021
Commonwealth Court of Pennsylvania	No. 475 C.D. 2021	Appeal quashed as interlocutory	September 20, 2021
Court of Common Pleas of Centre County	No. 2019-4310	Fifth Amended Complaint dismissed with prejudice	December 19, 2022
Supreme Court of Pennsylvania	Nos. 133 MM 2021; 140 MM 2023 (consol. with 138 and 139 MM 2023); 4 MM 2025	King's Bench petition denied; application for leave to appeal denied	———

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F	Order of the Supreme Court of Pennsylvania denying petition for allowance of appeal, No. 2 MAL 2026	July 28, 2026
G	Order of the Commonwealth Court of Pennsylvania denying application for reargument (not reproduced; see note at App. G)	Dec. 3, 2025
H	Superintendent's letter imposing second suspension (two days without pay), eight months after notice of the first suspension and Finding; served days later without a hearing on its contents (Fifth Am. Compl. Ex. 20a)	Jan. 18, 2019
I	Petitioner's written response to the second suspension letter (Fifth Am. Compl. Ex. 20b)	Jan. 24, 2019

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Lynn M. Kipp respectfully petitions for a writ of certiorari to review the judgment of the Commonwealth Court of Pennsylvania.

OPINIONS BELOW

The memorandum opinion of the Commonwealth Court of Pennsylvania (App. A) is unreported. The opinions and orders of the Court of Common Pleas of Centre County dated January 15, 2021, December 19, 2022, and June 23, 2023 (Apps. B–D), and its sealing order of June 19, 2020 (App. E), are unreported. The order of the Supreme Court of Pennsylvania denying allowance of appeal (App. F) and the Commonwealth Court's order denying reargument (App. G) are unreported.

JURISDICTION

The Commonwealth Court entered its judgment on October 7, 2025, and denied a timely application for reargument on December 3, 2025. The Supreme Court of Pennsylvania denied a timely petition for allowance of appeal on July 28, 2026. This petition is filed within 90 days of that order. Sup. Ct. R. 13.1. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment provides in relevant part: "Congress shall make no law ... abridging the freedom of speech ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Section 1 of the Fourteenth Amendment provides in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

The Supremacy Clause, U.S. Const. art. VI, cl. 2, provides in relevant part: "This Constitution, and the Laws of the United States which shall be made in Pur-

suance thereof ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

42 U.S.C. § 1983 provides in relevant part: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

INTRODUCTION

A tenured teacher with four consecutive "Distinguished" evaluations told her principal that she believed state testing protocol had been violated when her students were given food during state testing. Fifth Am. Compl. ¶ 46. Two days later, the principal left the practice to each teacher's choice in writing. ¶ 58. About two weeks after that, at the suggestion of the district's Human Resources ("HR") Director, a colleague signed an "Unlawful Harassment" ("UH") complaint against her. ¶¶ 62, 67. He signed it the same day a news article described a teacher disciplined for the same practice, which the Pennsylvania Department of Education was reviewing. ¶¶ 61, 67. Within a week HR summoned her, and on May 2, 2018 told her she was under investigation under the UH policy, although no complaint alleged conduct within either of the policy's two definitions. ¶¶ 64, 89, 93, 348. Over the next eleven months she was suspended four times, with the loss of both property and liberty interests, yet before each suspension she was never told who accused her or what she was alleged to have said or done. ¶¶ 38, 165. The district called it "confidential" under the UH policy. ¶¶ 93, 106.

The opinion below does not mention four facts the complaint pleads:

- the harassment complaint was signed the same day as the news report (Fifth

Am. Compl. ¶¶ 61, 67);

- HR's own reports identified no improper word or act by Petitioner (¶ 82);
- a complainant testified under oath at the May 23, 2019 arbitration hearing that Petitioner had violated neither of the policy's definitions (¶ 348; Ex. 43b);
- HR handed copies of the Finding to the complainants, including the local union president (¶ 112).

The state courts dismissed her § 1983 complaint on the pleadings. They held three things:

- the meetings at which she was not given names of accusers or evidence of wrongdoing amounted to due process;
- the district's own disputed charging document proved, at the pleading stage, that it would have disciplined her anyway;
- state-law rules required her to finish a union-controlled arbitration first, and to challenge closed-session decisions within 30 days.

Each holding departs from this Court's precedents: *Loudermill*, *Mt. Healthy*, *Felder*, *Patsy*, and, most recently, *Williams v. Reed* (2025). The petition should be granted.

STATEMENT OF THE CASE

This case comes to the Court on the pleadings. No court below permitted discovery. Every well-pleaded allegation had to be taken as true. Instead, the courts below accepted the defendants' account, and they relied on state decisions with a focus on her supplemental state torts, rather than this Court's § 1983 precedents for the crux of her lawsuit — repeated violations of her federal constitutional rights.

All record citations in this petition ("Fifth Am. Compl. ¶ __" and "Ex. __") are to the operative complaint and its exhibits, filed October 3, 2022. Petitioner titled it her "Fourth Amended Complaint." The trial court and appellate court treated it as the

Fifth Amended Complaint. Mem. Op. 9. This petition uses the courts' designation.

A. Legal Background

Section 1983 and the notice due before suspension. Section 1983 gives a cause of action against any person who, under color of state law, deprives another of rights secured by the Constitution and laws of the United States. 42 U.S.C. § 1983. State courts share jurisdiction over these suits with federal courts. *Haywood v. Drown*, 556 U.S. 729, 731 (2009). When they hear them, they may not apply state rules that would produce a different outcome than the same claim would receive in federal court. *Felder v. Casey*, 487 U.S. 131, 138 (1988). Before a tenured public employee is deprived of her position, she is entitled to notice of the charges against her, an explanation of the employer's evidence, and an opportunity to respond. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). Pennsylvania's School Code permits a tenured professional employee to be dismissed only for the causes it lists. 24 P.S. § 11-1122.

The district's two complaint policies. The district handles employee complaints under two policies. Policy 448 governs unlawful harassment, which it defines in only two ways: conduct relating to protected-class status, and sexual harassment. Fifth Am. Compl. ¶¶ 63–64; Exs. 6a–6b. Its definitions track the Pennsylvania Human Relations Act and federal EEOC guidelines. Fifth Am. Compl. ¶¶ 65–66. It also contains a confidentiality clause, which exists to protect people who report such harassment. *Id.* ¶ 69 n.6. Every other employee complaint falls under Complaint Policy 426. That policy calls for a meeting between the parties, then a meeting with the principal, and then a written complaint served on the other party, who replies in writing. *Id.* ¶¶ 83–85; Ex. 8.

The state rules at issue. Three state rules figure in this case. Section 1122 of the School Code lists the grounds for dismissing a tenured teacher, including persistent negligence, willful neglect of duties, and persistent and willful violation of the

school laws. 24 P.S. § 11-1122. Under Pennsylvania law, the union, not the employee, decides whether and how a grievance goes to arbitration. Fifth Am. Compl. ¶ 275. And the Sunshine Act requires a challenge to an agency's closed-session action to be brought within 30 days. 65 Pa.C.S. § 713. The district invoked Section 1122 to suspend Petitioner, and the courts below relied on the arbitration requirement and the 30-day limit to dispose of her federal claims. *See* Parts D–E.

B. From "Distinguished" to "Unlawful Harassment": Two Weeks After Her Report, and the Day of the News

Petitioner taught in the district since 2002, first at the middle school and, from 2011, at an elementary school. Fifth Am. Compl. ¶¶ 21–22; Mem. Op. 2. She was a union member for 17 years and served as her building's union representative and on several district-wide and union committees. Fifth Am. Compl. ¶¶ 24, 27. Her four most recent evaluations rated her high "Distinguished." *Id.* ¶ 23; Exs. 1a–1d. Her 2017–2018 evaluation, posted in January 2019, gave her perfect "Distinguished" scores in three of four categories. Fifth Am. Compl. ¶ 168.

Her students' composite growth score rose every year, reaching 13.37. That is far above the state standard of 0, which marks expected academic growth. Even a score of 2 shows "significant evidence" that students exceeded the standard. *Id.* ¶¶ 32–34. Her principal wrote in May 2018: "Year after year her students have the top math and science scores in the district as measured by the PSSA. Her PVAAS growth score is always exceptionally high as well." *Id.* ¶ 26; Ex. 2b. The complaint pleads that "[a]ll was going well for Plaintiff professionally until Plaintiff addressed a concern regarding PSSA testing protocol." *Id.* ¶ 38.

In the same weeks the harassment case began, the Superintendent and the principal each wrote Petitioner a letter of recommendation. Fifth Am. Compl. ¶ 26; Exs. 2a–2b. The Superintendent's letter is dated May 10, 2018, eight days after HR

told Petitioner of the "confidential" complaint. Ex. 2a; Fifth Am. Compl. ¶¶ 91–93, 104. It says: "On a personal note, Lynn is a woman of great integrity." Ex. 2a. It adds that she "has been successful in closing the achievement gap for our 4th grade math students at Benner elementary." *Id.*

After the Finding, twenty-three colleagues, school specialists, and former student teachers wrote letters for the Board. Fifth Am. Compl. ¶¶ 28, 130–132; Exs. 4a–4w. They described her as "kind, polite, and cooperative"; "professional, kind, cooperative, caring, and collaborative"; "extremely courteous, helpful, sincere, and professional"; and "one of the most dedicated teachers I have ever encountered." Exs. 4a–4w. They wrote that she "always puts her students' needs first," cares "not only about their academic scores, but also about their emotional well being," and "always has her students' and her colleagues well-being in mind." *Id.* "Students clearly enjoy having her as a teacher and strive to do their best." *Id.* A former student teacher wrote that Petitioner "taught me to always be polite while passing colleagues in the hallways, to be professional and appropriate in the staff lunchroom, and above all remember that the students come first." *Id.* One colleague wrote that she "is always very careful to keep issues confidential." *Id.* Another had been "questioned and listed as a witness against Lynn Kipp," and wrote that she "very strongly remember[ed] saying that I do not feel that she created a hostile working environment within our building." *Id.* Petitioner gathered the letters because she "had no idea what she was accused of saying or doing" and needed some way to defend herself. Fifth Am. Compl. ¶ 131. At her twenty-minute Board grievance session, held more than two months after the Finding and without the names of her accusers, the Board read the letters but asked her no questions, and she was not permitted to stay while administrators spoke. *Id.* ¶¶ 139–142.

The complaint pleads this sequence:

- **April 3, 2018.** After PSSA training, Petitioner told her principal that students

had been given food during the prior year's PSSA tests without her consent, which she believed violated protocol. ¶ 46.

- **April 4.** The principal called one short meeting of the fourth- and fifth-grade teachers. A colleague pointed at Petitioner and yelled, "I've had it with you!" The principal ended the meeting. ¶¶ 53–57.
- **April 5.** The principal resolved the matter by an email directing the test proctors to follow each teacher's decision on serving food during testing. ¶ 58.
- **April 9.** Testing began. ¶ 60.
- **April 16–18.** News reports described a Lancaster teacher disciplined for serving food during PSSA testing, with the Department of Education reviewing the incident. ¶¶ 60–61.
- **Within two days of the first news reports.** The HR Director gave two colleagues the complaint form for Unlawful Harassment Policy 448 and suggested they complete it so that she "could get involved to investigate Plaintiff." ¶¶ 62, 67.
- **April 18–19.** One colleague signed the form on April 18, the day of the news article. HR countersigned on April 19, exactly two weeks after the principal's email directing the proctors. No one else signed it. ¶¶ 58, 61, 67–68.

The Memorandum Opinion recast this chronology. After noting the news story, it states that the complaint was filed after Petitioner "engaged in several meetings, discussions, and encounters with other staff and teachers." Mem. Op. 2–3. The complaint pleads one dispute over testing snacks, confined to April 3 and 4: Petitioner's report to the principal, an email exchange that evening, and one meeting the principal called the next morning. Fifth Am. Compl. ¶¶ 46–57. The principal resolved it by email on April 5. ¶ 58. Between that email and HR's solicitation of the harassment complaint after the news reports, the complaint pleads no further meetings or disputes. ¶¶ 58–62. On a demurrer, the court was required to accept that sequence,

not rewrite it.

Policy 448 defines unlawful harassment only as conduct relating to protected-class status, or as sexual harassment. ¶¶ 63–64; Exs. 6a–6b. On May 31, 2018, the HR Director handed Petitioner a one-page "Finding." It said she had violated three unlawful harassment policies, covering professional staff, support staff, and students. Yet no student, parent, or support staff member had filed a complaint. ¶¶ 103, 112; Ex. 20b at 8–9. The Finding did not find protected-class harassment. Instead it used language from the sexual-harassment definition, an "intimidating, hostile ... working environment," to conclude that she had violated all three policies. ¶ 107; Ex. 20b at 9–10. Nothing in HR's reports alleged any sexual conduct, or any improper word or act at all. ¶¶ 82, 434.

The district's own documents do not support that label:

- Neither of HR's two later reports identified any improper word or act by Petitioner. ¶ 82.
- One report acknowledged the "[f]ailure of administration ... to utilize the progressive discipline process." ¶ 111.
- At the May 23, 2019 arbitration hearing, a complainant testified under oath that Petitioner had not violated either definition, and that HR had told the complainants to use the harassment form. ¶¶ 348–349; Ex. 43b (transcript excerpt); *see* Ex. 43a (full transcript).

C. Meetings Without Information

The courts below held that Petitioner received adequate process because she had "multiple meetings and written communications." Mem. Op. 17. The complaint pleads what those meetings contained:

Date	Event	Petitioner asked	She was told	Fifth Am. Compl.
May 2, 2018	Meeting with HR Director; union representative present	Who complained, and about what	Names and details "confidential" under Policy 448; her repeated requests were refused	¶¶ 91–95, 115(B); Ex. 9
May 3, 2018	HR email	For details HR agreed to send	Only that there were "[s]everal occurrences" from 2013–2018, each "a contentious verbal altercation"; no names, dates, or words. Her request for the promised list went unanswered	¶¶ 98–100; Ex. 10
May 31, 2018	Finding; first suspension (3 days unpaid)	For the accusations and accusers	"Confidential." The one-page Finding named no accuser and no specific act; no investigatory meeting or *Loudermill* hearing was held	¶¶ 103–109; Ex. 11
June 4, Aug. 24, and Oct. 2018	Emails to Superintendent (June 4 also to Board)	Who accused her, and why	No reply; no investigatory meeting or *Loudermill* hearing offered	¶¶ 124–126, 144–145; Ex. 14
Aug. 14, 2018	Board grievance session (20-minute limit)	Told the Board she still did not know who accused her or what she had said or done	No accusers, allegations, or evidence disclosed. 20-minute limit; no attorney; witnesses excluded, including the grievance representative the contract requires; the Board did not respond or ask questions, and she was sent out while administrators spoke	¶¶ 136–142
Jan. 18, 2019	Second suspension (2 days unpaid); new 4-page letter with new accusations	Questions about the letter's new charges	"[T]he letter is not to be questioned today"; "[n]ow is not the time to discuss this." No accuser named; she served the suspension with no hearing	¶¶ 176, 178; Exs. 20a, 20b at 3

Date	Event	Petitioner asked	She was told	Fifth Am. Compl.
Feb. 25, 2019	Removed from classroom without exigent circumstances (third suspension)	How long she would be out	Removed while the district "looked into" a union meeting and "something confidential" left in the teachers' lounge; no accusation against her or evidence identified; leave to last "[a] few days"	¶¶ 69 n.6, 223–227, 290
Apr. 18, 2019	"Loudermill hearing"	For the names and evidence	None given. District counsel "refused to state who was making such an allegation and what specific allegation was being alleged," and questioned her about union meetings and emails	¶¶ 71 n.7, 278–284
Apr. 23, 2019	Dismissal recommendation	For the names and evidence	Administrators "weren't prepared" to provide them; dismissal recommended anyway	¶ 285

Petitioner learned the name of the one person who signed the complaint eight months after it was filed. ¶ 71 n.7; ¶ 78. She never learned who accused her of retaliation. ¶ 71 n.7; ¶ 285. The local union president attended HR's meeting with the complainants, then denied any involvement to Petitioner and to the union's representative council. ¶¶ 75–76. The union representative who sat with Petitioner on May 2, 2018 asked HR to share the information, and it was not shared. ¶¶ 95, 100. He was close to the union president, and both kept from Petitioner what they knew of the complaint. ¶ 91 n.14.

D. Each Petition for Redress Was Followed by Escalation

The complaint pleads this sequence:

Petitioner's protected activity	What followed	Fifth Am. Compl.
Apr. 3, 2018: reports testing concern to principal	Apr. 18: harassment complaint solicited and signed. May 31: first suspension (3 days unpaid)	¶¶ 46, 62, 67, 103–104
June 4, 2018: Grievance #1, with an email to Superintendent and Board asking to know the accusations	No reply to her request to know the accusations. Grievance held at Board level for four months; denial undated, with no public vote on record	¶¶ 124–126, 143, 150–153; Exs. 13, 14, 17, 18
Jan. 18, 2019: union notifies her that Grievance #1 is approved for arbitration	About four hours later: new suspension letter with new charges under School Code § 1122, naming no accuser. Second unpaid suspension, served Jan. 23–24 with no hearing	¶¶ 170–178; Exs. 20a; 20b at 3
Jan. 24, 2019: written response and Grievance #2. Jan. 29: asks the local district attorney to investigate the district	Feb. 25: removed from her classroom (third suspension)	¶¶ 186–187, 223–227, 414; Exs. 20b, 57a–57b
Mar. 4, 2019: letter to Board reporting Sunshine Act violations; report to district attorney	Mar. 11: warned to stop contacting bargaining-unit members who participated in the investigation, "even as a witness." Mar. 13: "Loudermill" notice listing new accusations, naming no accuser	¶¶ 235, 237, 239–240, 415; Exs. 24a–24e, 25, 26, 58
Apr. 17–23, 2019: written questions; asks for names and evidence	Apr. 23: names and evidence refused; dismissal recommended. Apr. 24: barred from union meetings on school property. Apr. 26: indefinite suspension without pay (fourth)	¶¶ 21, 38, 278–285, 293, 295; Exs. 33a, 35

The January 18, 2019 suspension was not a reduction of the first one. By then the Board had denied Grievance #1, more than six months after she filed it, and the union had sent it to arbitration, so the matter was out of the district's hands. ¶¶ 148–149, 170, 182. The contract required a Board decision within seven days of the Board-level session; hers was the twenty-minute session of August 14, 2018, and the Board then held the grievance four more months. Ex. 42 at 7; ¶¶ 134, 143. The district issued a new four-page letter drafted by its solicitors. The letter made new accusations reaching back to 2013 and replaced the harassment policy with a new

legal basis, Section 1122 of the School Code. ¶¶ 172–176; Ex. 20a (App. H). It came one day after the district posted her fourth consecutive "Distinguished" evaluation. ¶¶ 168, 181. She served two unpaid days with no hearing and no evidence. ¶ 178. All of this was months before the May 9, 2019 Statement of Charges. ¶ 300.

Petitioner's written response that week (Ex. 20b, App. I) told the Superintendent: "One of the foundational tenets of constitutional due process is that I must be told the specific legal charges being leveled against me and have a fair opportunity to respond. Self-evidently, I cannot grieve a legal charge that I do not yet know about." Ex. 20b at 6. Of the original Finding, she asked: "How can I defend what I do not know?" *Id.* at 10. The Commonwealth Court described this second suspension only as the first one, "reduced to two days." Mem. Op. 3, 18–19.

The district's March 11, 2019 letter directed Petitioner to stop contacting bargaining-unit members who had participated in the investigation, "even as a witness." It declared her situation "not a matter of public concern" and reminded her that she was "quite aware of the term 'Confidential.'" Ex. 25; ¶ 237. On April 26, 2019, she was suspended indefinitely without pay pending dismissal. ¶¶ 21, 38, 295. A Statement of Charges followed on May 9. ¶ 300.

Petitioner chose arbitration only for that Statement of Charges. ¶ 301. Her earlier grievances went to arbitration through the union. There, the union's attorney appeared over her objection as "exclusive representative," moved to quash her subpoenas, and joined the district in opposing her request for counsel of her own. ¶¶ 321–323, 332, 339; Ex. 43. The contract allowed a grievant to represent herself "at all stages of the grievance procedure." Ex. 42 at 6. She has never been dismissed.

E. Proceedings Below

Petitioner filed her initial Complaint in the Court of Common Pleas of Centre County in January 2020. It was a federal civil rights action under § 1983 for violations of the

First and Fourteenth Amendments, "along with supplemental Pa. state tort claims" such as defamation. Appellant's Br. 2. The operative complaint quotes § 1983 at the top of its first page of text, before its first numbered paragraph. It describes itself as a § 1983 federal lawsuit accompanied by Pennsylvania tort claims. Fifth Am. Compl. at 2, ¶¶ 1, 13.

The complaint runs 117 pages. Mem. Op. 14. It cites its exhibits throughout. Those exhibits, filed with her earlier complaints, exceed 290 pages and remain part of the certified record. *Id.* at 7 n.7. Petitioner told the Commonwealth Court that when she e-filed the operative complaint, the filing office did not docket the exhibits despite her effort to correct it. Reply Br. to Appellee Sharp 7–8.

On January 15, 2021, the trial court dismissed. It held that Petitioner had failed to exhaust administrative remedies because her grievance arbitration was not complete when she filed suit. Trial Ct. Op., Jan. 15, 2021, at 6–7. Most of the rest of that opinion addressed procedural objections and the supplemental state tort claims. Its § 1983 analysis occupies about four pages. *Id.* at 14–18. It rejected the stigma-plus claim in two sentences. Mem. Op. 30. It did not address the allegation that the harassment complaint was retaliation for her PSSA report. *Id.* at 25. On December 19, 2022, the court dismissed the Fifth Amended Complaint with prejudice. It cited pleading-form rules and the absence of new allegations, although her complaint was considerably longer, and gave no further analysis of the federal claims. *Id.* at 10.

The Commonwealth Court vacated the dismissal to the extent it rested on pleading-form rules, but affirmed on the merits. Mem. Op. 14–15, 43–44. On procedural due process, it held that the meetings and communications Petitioner received were adequate. It further held that the charges amounted to "serious misconduct" warranting unpaid suspension "without further process," relying on an unreported state decision. *Id.* at 20–22. It held that Petitioner's allegations of closed-session decisions were untimely under the Sunshine Act's 30-day limitations period, 65 Pa.C.S. § 713. Mem.

Op. 22–23.

On the First Amendment claim, the court acknowledged that PSSA testing violations "could pose a public concern." *Id.* at 26. It nonetheless held that the district's statement of charges "demonstrated" that the same adverse action would have occurred without the protected conduct. *Id.* at 26–28. It also held that Petitioner's report to the district attorney was not protected speech because her motive was personal. *Id.* at 27. Reargument was denied on December 3, 2025, and the Supreme Court of Pennsylvania denied allowance of appeal on July 28, 2026.

The opinion resolved the federal claims almost entirely through state law. Its due process analysis rests on state decisions, including an unreported one written by the same judge who wrote the opinion below, which the opinion read as permitting an unpaid suspension "without further process" for "serious misconduct." Mem. Op. 16–22; *see Sweda v. Upper Bucks Cnty. Tech. Sch.* (Pa. Cmwlth. No. 282 C.D. 2023, filed May 20, 2024) (Fizzano Cannon, J.). Its First Amendment analysis rests on a state decision, *Todora v. Buskirk*, 96 A.3d 414 (Pa. Cmwlth. 2014). Mem. Op. 23–28. It applied the employer's same-decision defense without citing *Mt. Healthy*, taking the rule from *Todora* instead. *Id.* at 24, 26–28.

Of this Court's decisions, the opinion's § 1983 analysis cites only four: *Loudermill*, *Gilbert*, *Pickering*, and *Constantineau*. The last three appear only as quoted or cited within state decisions. *Id.* at 16–31. It does not cite *Schmidt v. Creedon*, *Mathews v. Eldridge*, *Board of Regents v. Roth*, *Felder*, *Howlett*, *Patsy*, or *Heffernan*, although each was briefed. Nor does it address:

- the reports to the district attorney and the letters to the Board as petitions for redress of grievances, as opposed to speech judged by Petitioner's motive (Mem. Op. 26–27);
- the order barring Petitioner from union meetings, the directive to stop contacting bargaining-unit members, or the questioning about union activity at the April

18, 2019 "Loudermill" meeting, as burdens on her freedom of association;

- the allegation that the union president and the teacher-defendants acted jointly with district officials, which the court set aside as moot (Mem. Op. 42 n.24; *see id.* at 22 n.15, 29 n.19, 31 n.21);
- the January 18, 2019 suspension as a separate deprivation.

The opinion also describes the pleaded record in ways the complaint does not support:

The opinion below	The Fifth Amended Complaint
Petitioner "engaged in several meetings, discussions, and encounters" before the harassment complaint. Mem. Op. 2–3.	One dispute, confined to April 3–4: Petitioner's report, an email exchange that evening, and one meeting the principal called the next morning, which he resolved by email on April 5. No meeting or dispute is pleaded between that email and HR's solicitation of the complaint after the news reports. ¶¶ 46–62.
"Her suspension was ultimately reduced to two days." Mem. Op. 3.	The Superintendent said she was changing three days to two, but handed Petitioner a new four-page letter with new accusations on a new legal basis, School Code § 1122, after the grievance had gone to arbitration. ¶¶ 170–178; Exs. 20a, 20b.
She received "multiple meetings and written communications." Mem. Op. 17.	At each meeting the complaint describes, she was refused the names of her accusers and the evidence. ¶¶ 93–94, 106, 138 n.22, 165, 176, 282–285.
She was "never truly 'in the dark.'" Mem. Op. 21.	She received no information about the complaints for eight months, until HR's summary packets reached her in December 2018, seven months after her first suspension. She never learned who accused her of retaliation. ¶¶ 78, 285; ¶ 71 n.7.
The statements "were not made public either on social media or through other channels." Mem. Op. 31.	HR gave copies of the Finding to the complainants. The district's statement about "assertions of unlawful harassment" has been online since 2019. ¶¶ 112, 431–432.
"She chose arbitration." Mem. Op. 7, 20.	Only for the Statement of Charges that followed her fourth suspension. Her earlier grievances went to arbitration through the union, whose attorney appeared over her objection. ¶¶ 170, 301, 321–323.

The opinion below	The Fifth Amended Complaint
The decision was "to suspend and then terminate Kipp." Mem. Op. 28. Her return "would worsen the hostile environment her presence had already created." Mem. Op. 21–22.	Suspended indefinitely since April 26, 2019; never terminated. ¶¶ 21, 295. Twenty-three colleagues and former student teachers described her as kind, respectful, and professional; one, questioned by HR as a witness, told HR she had not created a hostile environment. A complainant testified under oath at the May 23, 2019 arbitration hearing that Petitioner violated neither definition of unlawful harassment. ¶¶ 130–132, 348; Exs. 4a–4w, 43b.

F. How the Federal Questions Were Raised and Decided Below

Petitioner pleaded her claims under § 1983 from the outset. At a February 24, 2021 hearing, she told the trial court that her case was "a federal case, 1983" and that defendants had violated her federal constitutional rights. N.T. 2/24/21 at 8:16–21.

In her Commonwealth Court brief she argued:

- *Loudermill* and *Schmidt v. Creedon* (Br. 25–26, 34);
- *Felder*, *Patsy*, and *Howlett v. Rose* (Br. 29, 31, 33, 49);
- *Pickering* and *Heffernan v. City of Paterson* (Br. 48–49).

She pressed the same federal questions in her application for reargument (at 3–4, 9–10, 16–17) and in her petition for allowance of appeal (at 2–3, 10–24). The Commonwealth Court decided each federal claim on the merits. Mem. Op. 16–31.

The first question presented was raised at each stage. Petitioner's Commonwealth Court brief described "Repeated Suspensions Within One Year Without Names of Accusers or Evidence." Appellant's Br. 10. It argued that the word "confidential" was used "to deny her information about the complaints and the names of the accusers." *Id.* at 13; *see id.* at 34–46. It described her indefinite suspension as "endless." *Id.* at 48, 56. Her application for reargument argued that each suspension was imposed "without prior notice of charges, identification of accusers, the evidence relied upon, or a meaningful opportunity to respond." Appl. for Reargument 3; *see id.* at 4, 9,

16–17. Her petition for allowance of appeal pressed the same point under *Loudermill* and *Schmidt* (Question 3; at 14–18), and again described the "endless suspension" (at 24).

The Commonwealth Court decided it. It recognized that *Loudermill* hearings are "generally associated with termination or indefinite suspensions." Mem. Op. 20. It then held that Petitioner, "indefinitely suspended without pay while the matter went to arbitration," was not "denied any formal aspect of process," that the district "had to comply with confidentiality policies regarding the harassment complaints," and that Petitioner was never "truly 'in the dark.'" *Id.* at 21. A federal question "pressed or passed upon below" is properly before this Court. *United States v. Williams*, 504 U.S. 36, 41 (1992). The first question was both. And "[o]nce a federal claim is properly presented, a party can make any argument in support of that claim." *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992).

The second question was also raised and decided. Petitioner's brief challenged "a sham confidentiality policy," Appellant's Br. 33, and argued that the district "restricted her from contacting bargaining unit members involved in the investigation – meaning including favorable witnesses," *id.* at 37; *see id.* at 41. Her application for reargument argued that the district restricted her rights "by forbidding contact with bargaining-unit witnesses and barring her from union meetings." Appl. for Reargument 10. Her petition for allowance of appeal asked whether state courts may defeat § 1983 claims through "confidentiality" constructs (Question 2; at 21–23). The Commonwealth Court decided both halves of the question. It held that the district "had to comply with confidentiality policies." Mem. Op. 21. It affirmed the trial court's holding that the Superintendent's warning that Petitioner's conduct "violated District confidentiality policies and could lead to her termination did not amount to retaliatory action." *Id.* at 25. It treated her outreach to colleagues as "personal employment issues," *id.* at 26, and relied on the Statement of Charges' account of "unheeded warnings" to

refrain from contact with "other individuals involved in the original investigations," *id.* at 28.

REASONS FOR GRANTING THE PETITION

The decision below resolved Petitioner's federal claims at the pleading stage by applying state statutes, a local policy's "confidential" label, and state case law in place of this Court's precedents. State courts hear a large share of § 1983 litigation. When they apply rules that would not survive in federal court, the same federal claim succeeds or fails depending on which courthouse the plaintiff enters. The Supremacy Clause does not permit that result.

The errors below share one feature. Wherever federal law required the courts to take Petitioner's allegations as true, they took the district's account instead. On the first question, they accepted the district's view that a local policy made the accusations "confidential," and counted the meetings at which nothing was disclosed as process. Mem. Op. 17, 21. They held that she could have cleared her name at hearings where she was never told the accusation, while the reports that, as pleaded, show no unlawful harassment remained sealed. *Id.* at 8, 12–13, 30–31; Fifth Am. Compl. ¶¶ 82, 434. On the second, they held that the same policy justified warning her that contacting coworkers "could lead to her termination," and that the warning was not retaliation. Mem. Op. 21, 25. On the third, they called her outreach to her union and her reports to the district attorney personal matters, and treated the district's own charging document as proof of its motive. *Id.* at 26–28. On the fourth, they applied a state 30-day deadline and a state exhaustion rule to federal claims. *Id.* at 22–23; Trial Ct. Op., Jan. 15, 2021, at 6–7. Each step substituted a state rule or the employer's word for this Court's standard. Correcting those errors is not the point of this petition. The point is the rules that produced them, which reach every public employee who sues under § 1983 in a state court.

The decision below conflicts with this Court's precedents governing notice, retaliation, and the enforcement of § 1983 in state courts, including *Cleveland Board of Education v. Loudermill*, *Goldberg v. Kelly*, *Mathews v. Eldridge*, *Goss v. Lopez*, *Mt. Healthy City School District Board of Education v. Doyle*, *Patsy v. Board of Regents*, *Felder v. Casey*, *Owens v. Okure*, and *Williams v. Reed*. These are not misapplications of correctly stated rules. The courts below applied different rules from the ones this Court and the Third Circuit apply:

- *Loudermill* requires notice of the charges and an explanation of the evidence before the deprivation. 470 U.S. at 546. The courts below asked instead how many meetings were held. Mem. Op. 17, 21.
- The Third Circuit requires a pre-suspension hearing even when grievance arbitration is available afterward. *Schmidt*, 639 F.3d at 597. The court below instead relied on its own unreported decisions, one written by the author of the opinion below, to excuse any further process for "serious misconduct." Mem. Op. 17, 22.
- *Mt. Healthy* places on the employer the burden of proving that it would have acted anyway. 429 U.S. at 287. The court below treated the employer's own charging document as that proof, on the pleadings. Mem. Op. 26–28.
- The Third Circuit does not require a union association claim to show public concern. *Palardy*, 906 F.3d at 83. The court below dismissed the claim for lack of it. Mem. Op. 26.
- Section 1983 claims carry the State's general personal-injury limitations period and no exhaustion requirement. *Owens*, 488 U.S. at 249–50; *Patsy*, 457 U.S. at 516. The courts below applied a 30-day Sunshine Act deadline and required exhaustion of a union-controlled arbitration. Mem. Op. 22–23; Trial Ct. Op., Jan. 15, 2021, at 6–7.

Each conflict warrants review. Sup. Ct. R. 10(b), (c).

I. *LOUDERMILL* NOTICE MUST TELL THE EMPLOYEE WHO ACCUSED HER AND WHAT SHE ALLEGEDLY DID, AND A "CONFIDENTIAL" LABEL CANNOT EXCUSE IT.

"The tenured public employee is entitled to oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985). The opportunity to be heard must come "at a meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). An employee who is never told what she is accused of has no meaningful way to answer it.

That is especially true when the case against her rests on what other people say:

> "[W]here governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. ... [I]t is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy."

Greene v. McElroy, 360 U.S. 474, 496 (1959). "In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine adverse witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). No one can confront an accuser whose name is withheld, or rebut an accusation that is never described.

Petitioner received none of this. At meeting after meeting, and in letter after letter, she asked who had accused her and of what. Each time the district answered that the matter was "confidential" under Policy 448. Fifth Am. Compl. ¶¶ 93–94, 106, 109, 176, 282–285; *see* Statement, Part C. Union officers who knew the

answers kept them from her too. *Id.* ¶¶ 75–76, 91 n.14. HR's email describing "several occurrences ranging in dates from 2013–2018," each "a contentious verbal altercation," is not notice of a charge. *Id.* ¶ 98. It only announces that a charge exists.

Petitioner told the trial court the same thing. At the December 12, 2022 hearing she explained that "every time I asked for information, they denied me the evidence or who ... alleged ... that I said or did. They did this for all four suspensions." N.T. 12/12/22 at 13:20–23. "[T]hey kept everything a secret and kept claiming it was confidential." *Id.* at 15:7–8. Her witnesses "were told over and over again, that we could not know anything about it, anything about the complaint that it was confidential." *Id.* at 24:25–25:2.

The second suspension shows the pattern most plainly. On January 18, 2019, about four hours after the union told Petitioner that her grievance was going to arbitration, the Superintendent handed her a four-page letter and suspended her for two days without pay, to be served the following week. Exs. 20a, 20b at 3 (Apps. H, I); Fifth Am. Compl. ¶¶ 170–172, 177. The letter named no accuser. It attributed the charges to "professional peers," "a coworker," and "[t]hose interviewed." Ex. 20a at 1–2. It added incidents reaching back to 2013 that the Finding never mentioned. It rested the suspension not on Policy 448 but on Section 1122 of the School Code, citing "persistent negligence, persistent and willful violations of the school laws as well as willful neglect of duties." *Id.* at 3; Fifth Am. Compl. ¶ 175. Those are the statutory grounds for dismissing a tenured teacher. 24 P.S. § 11-1122. When Petitioner and her union representative asked about the new charges, they were told that "[t]he letter is not to be questioned today" and "[n]ow is not the time to discuss this." Ex. 20b at 3; Fifth Am. Compl. ¶ 176. She served the suspension with no hearing. *Id.* ¶ 178. New charges and a new legal basis, with no chance to answer either, is a decision announced, not a hearing held. When the state unemployment agency later reviewed the same statutory grounds, cited for her April 2019 suspension, it found that the

district "has not shown that the claimant violated the rule." Ex. 59; Fifth Am. Compl. ¶ 445.

The Commonwealth Court treated this suspension as the first one, "reduced to two days." Mem. Op. 3, 18–19. The label does not matter. Whether the January 2019 letter imposed a new suspension or modified the May 2018 decision, it was the act that took her pay, and it took her pay on new accusations and a new statutory basis that she was refused the chance to discuss. Fifth Am. Compl. ¶¶ 170–178; Ex. 20b at 3. Due process attaches to the deprivation, not to the employer's name for it. The pay was taken in January 2019, so notice of the charges supporting that loss was owed then. *Loudermill*, 470 U.S. at 546.

The confidentiality rationale is especially weak here. Policy 448's confidentiality clause exists to protect people who report protected-class or sexual harassment. Fifth Am. Compl. ¶ 69 n.6. The Finding did not accuse Petitioner of protected-class harassment, and no report identified any sexual conduct, or any improper word or act at all. *Id.* ¶¶ 82, 107; Ex. 20b at 9–10. HR's own report found "no evidence of harassment as defined in the policy based on race, color, national origin/ethnicity, sex, age, disability, sexual orientation, religion or genetic information." Ex. 7d at 2. And at the May 23, 2019 arbitration hearing, a complainant testified under oath that Petitioner had violated neither definition. Fifth Am. Compl. ¶ 348; Ex. 43b.

The label did not protect the complainants. They held their own copies of the Finding. Fifth Am. Compl. ¶ 112. It kept the case from the accused. More than five months after the complaint was filed, and four months after the Finding, Petitioner was still asking her union for the complainants' names and a copy of the complaint. The union's regional field manager answered that her representative "has requested the information you are asking for in preparation for Arbitration," and that "[w]hen he receives the information he will share it with you." Ex. 51 (Oct. 1, 2018); Fifth Am. Compl. ¶ 416. Either the district had not disclosed the accusations even to the

union processing her grievance, or the union had them and withheld them. *See id.* ¶¶ 75–76, 101, 136 n.21. On either reading, "confidential" worked only against the one person entitled to notice.

The district had a transparent process and did not use it. Its Complaint Policy 426 governs every employee complaint that is not unlawful harassment. Its stated purpose is "to establish and maintain recognized two-way channels of communication." It calls for a meeting between the parties, then a meeting with the principal, and then a written complaint served on the other party, who "would reply in writing." Fifth Am. Compl. ¶¶ 83–85; Ex. 8. HR never gave the complainants that policy. *Id.* ¶¶ 86–87. One complainant admitted she was never shown it. *Id.* ¶ 350. Routing a workplace disagreement through the harassment policy replaced a process built on disclosure with one built on secrecy.

Federal law draws the same line. Harassment law "does not prohibit all verbal or physical harassment in the workplace" and is not "a general civility code for the American workplace." *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998). The district still borrowed the vocabulary of sexual harassment, a "hostile ... working environment," to label a workplace disagreement. It then used that label's confidentiality clause to withhold the accusers and the evidence. The Commonwealth Court repeated the label, concluding that her return would "worsen the hostile environment her presence had already created." Mem. Op. 21–22. It did not mention the twenty-three letters attesting to the opposite, or the complainant's sworn testimony that Petitioner violated neither definition. Exs. 4a–4w, 43b.

The Commonwealth Court's two reasons for excusing the withholding are each foreclosed by this Court's decisions.

- *A local policy cannot set the process the Constitution requires.* The court held that the district "had to comply with confidentiality policies regarding the harassment complaints." Mem. Op. 21. But once due process applies, "the question remains

what process is due," and "[t]he answer to that question is not to be found in the [state] statute." *Loudermill*, 470 U.S. at 541. If a state statute cannot narrow the process due, a school district's policy cannot either.

- *Notice after the fact is not notice.* The court reasoned that Petitioner was never "truly 'in the dark'" because she later named the complainants in her lawsuit. Mem. Op. 21. But due process requires that a deprivation "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Loudermill*, 470 U.S. at 542 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). Information an employee pieces together in later litigation cannot supply the notice due before the deprivation. She received no information about the complaints until HR's summary packets reached her in December 2018, seven months after her first suspension. She never learned who accused her of "retaliation," the charge on which she has been suspended without pay since April 2019. Fifth Am. Compl. ¶ 71 n.7, ¶¶ 78, 285.

The Third Circuit has rejected the same reasoning. Applying *Loudermill* to Pennsylvania public employees, it held that, absent extraordinary circumstances, a brief pre-suspension hearing is required even when a union grievance procedure lets the employee challenge the suspension afterward. *Schmidt v. Creedon*, 639 F.3d 587, 597 (3d Cir. 2011). If a grievance after the suspension cannot supply the notice due before it, names Petitioner learned only after every grievance stage, and then used in her own lawsuit, cannot supply it either.

The court also adopted a state-law rule that "serious misconduct" warrants unpaid suspension "without further process." Mem. Op. 22. *Gilbert v. Homar* permitted suspension without a prior hearing only because an independent body had already supplied reasonable grounds: police had arrested the employee and formally charged him with a felony. Even then, the employer owed a prompt hearing afterward. 520 U.S. 924, 933–35 (1997). Here the accusers were coworkers, the investigator was the

employer's own HR Director, and no independent body ever found anything. The seriousness of an accusation is a reason to let the employee answer it, not a reason to keep it from her.

The balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), points the same way. It weighs three factors: the private interest at stake, the risk of an erroneous deprivation under the procedures used, and the government's burden in providing more. Here each factor favors disclosure:

- **The private interest** is a tenured teacher's livelihood and her good name.
- **The risk of error** is at its highest when the employee cannot learn who accused her or of what. She cannot point out a mistaken memory, a grudge, or an accusation that was never harassment at all.
- **The government's burden** is almost nothing. Telling an employee what she is accused of costs the district a sentence. Its own Complaint Policy 426 already required that much for ordinary workplace disputes.

Counting meetings is not the federal test. Both courts below found due process in the number of meetings and letters. Mem. Op. 17, 21 (citing Trial Ct. Op., Jan. 15, 2021, at 16). This Court's cases ask what the employee was told, and when. Due process requires "timely and adequate notice detailing the reasons" for the action. *Goldberg*, 397 U.S. at 267–68. The notice must come before the deprivation, so the employee can answer it. *Loudermill*, 470 U.S. at 546; *Schmidt*, 639 F.3d at 597. Here the meetings did the opposite. Each one brought new accusations or a new punishment. None brought the names of her accusers, a specific account of what she said or did, or the evidence. And each escalation followed her union activity or a petition to the Board or the district attorney. *See* Statement, Parts C–D. Neither court asked whether any of the four suspensions, judged on its own, was preceded by notice of its charges and a chance to answer them.

A schoolchild receives more. Before even a short school suspension, a stu-

dent must receive "oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have." *Goss v. Lopez*, 419 U.S. 565, 581 (1975). Petitioner, a tenured teacher, was suspended four times without either.

Even the most employer-friendly standard requires more. In the Third Circuit, pre-deprivation notice suffices "if it apprises the vulnerable party of the nature of the charges and general evidence against him." *Gniotek v. City of Philadelphia*, 808 F.2d 241, 244 (3d Cir. 1986). That court applied the test to a tenured professor accused of sexual harassment in *McDaniels v. Flick*, 59 F.3d 446 (3d Cir. 1995). It found notice adequate because he was told which student had complained and was questioned about the specific allegations. Petitioner was told neither who complained nor what she supposedly did. Petitioner has found no decision approving the withholding of both the accusers and the substance of the accusation, repeatedly and for years. Whether a local confidentiality clause can produce that result is a question this Court has not decided and should.

The deprivation has no end. Petitioner has been on what her complaint calls an "endless suspension 'pending firing'" since April 26, 2019, with no dismissal decision. Fifth Am. Compl. ¶ 69 n.6; *see id.* ¶¶ 21, 295. "At some point, a delay in the post-termination hearing would become a constitutional violation." *Loudermill*, 470 U.S. at 547. "Once suspension has been imposed," the employee's "interest in a speedy resolution of the controversy becomes paramount." *Barry v. Barchi*, 443 U.S. 55, 66 (1979). *Gilbert* itself remanded for consideration of whether the post-suspension hearing was prompt enough. 520 U.S. at 935–36.

The "serious misconduct" exception is being built through unpublished decisions that escape review. The Commonwealth Court's due process holding rests on two of its own unreported decisions:

- *Sweda v. Upper Bucks County Technical School* (Pa. Cmwlth. No. 282 C.D.

2023, filed May 20, 2024) was cited for the rule that a teacher accused of "serious misconduct" may be suspended without pay "without further process." Mem. Op. 17, 22.

- *North Allegheny School District v. North Allegheny Federation of Teachers* (Pa. Cmwlth. No. 1379 C.D. 2019, filed Nov. 9, 2020) was cited for the rule that a short suspension "will generally not warrant a *Loudermill* hearing." Mem. Op. 21.

Neither decision is published, yet both may be cited as persuasive authority. *Id.* at 17 n.14. This opinion, also unpublished, now joins them. The result is a body of state decisions that defines a federal constitutional right and is cited from case to case. It never produces a reported decision that the Pennsylvania Supreme Court, or this Court, is likely to review.

Meanwhile, under *Schmidt*, 639 F.3d at 597, a Pennsylvania teacher therefore has this claim in federal court in Harrisburg but not in a state court a few blocks away. *See* Sup. Ct. R. 10(c); *cf.* R. 10(b).

Any public employer can use this method. Under the decision below, a public employer can suspend a tenured employee with years of "Distinguished" ratings without telling her why, in three steps:

1. Hand her coworkers an unlawful harassment complaint form for a workplace disagreement that is not unlawful harassment.
2. Invoke the unlawful harassment policy's confidentiality clause.
3. Suspend her without naming her accusers or describing what she said or did wrong.

The court below held each step lawful. Mem. Op. 20–22. Confidentiality provisions are common in public employers' harassment policies, so the same three steps are available to them all. The Court should hold that a local confidentiality clause does

not displace the federal requirement of notice of the charges and the substance of the evidence. Where the charge rests on accusers' statements, that notice must include who the accusers are.

This is a question about official policy, not one administrator's error. The withholding was done under the district's written policy. A school district is liable under § 1983 when "execution of a government's policy or custom ... inflicts the injury." *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 694 (1978). The complaint pleads both the written policy and a custom of using Policy 448 to discipline employees for ordinary workplace disagreements, with Petitioner the only one repeatedly suspended under it. Fifth Am. Compl. ¶¶ 113–115, 119, 401, 411.

The same withholding denied Petitioner any chance to clear her name. "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential." *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972) (quoting *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971)). Injury to reputation alone is not enough; it must accompany a tangible loss such as employment. *Paul v. Davis*, 424 U.S. 693, 701 (1976). "Loss of one's reputation can, however, invoke the protections of the Due Process Clause if that loss is coupled with the deprivation of a more tangible interest, such as government employment." *Patterson v. City of Utica*, 370 F.3d 322, 330 (2d Cir. 2004). The employee must also dispute the truth of the stigmatizing charge, since the hearing exists "to provide the person an opportunity to clear his name." *Codd v. Velger*, 429 U.S. 624, 627–28 (1977) (per curiam).

The Third Circuit calls this the "stigma-plus" test. It is met when a public employer creates and publicly disseminates a false and defamatory impression of the employee in connection with an adverse employment action. *Hill v. Borough of Kutztown*, 455 F.3d 225, 236 (3d Cir. 2006). The court below adopted that test and recognized that a suspension can supply the "plus." Mem. Op. 29–30. The complaint pleads each

element:

- **Stigma.** The Finding told Petitioner, and separately each complainant, that she had violated three unlawful harassment policies. Fifth Am. Compl. ¶¶ 103, 112. It found no protected-class harassment, and nothing in HR's reports alleges any sexual conduct, or any improper word or act at all. *Id.* ¶¶ 82, 434; Ex. 20b at 9–10. The Finding nonetheless lifted language from the policy's sexual-harassment definition, calling her conduct "severe" and saying she was "creating an intimidating, hostile ... working environment." Fifth Am. Compl. ¶ 107; Ex. 20b at 9–10. With protected-class harassment ruled out, sexual harassment was the only definition left for that language to describe. The complaint pleads that the Finding thus told her colleagues she had violated the sexual-harassment definition of three policies, and that this was false. Fifth Am. Compl. ¶¶ 112, 425, 437(a). An accusation of sexual harassment is a charge against character, not job performance.
- **Publication.** HR met separately with the complainants, including the local union president and two teacher-defendants, and gave each of them their own copy of the Finding, "containing the same false and defamatory allegation." *Id.* ¶ 112. The district informed Petitioner's colleagues that she had violated the sexual-harassment definition of three policies. *Id.* ¶ 425. The individual defendants spread the accusation through the union and the school community. *Id.* ¶¶ 427, 430, 439. The district also told the state Office of Open Records that records about Petitioner concerned "assertions of unlawful harassment." That statement has been online since May 2019 and appears in a search of her name. *Id.* ¶¶ 431–432; Exs. 47a–47b. Finally, the Board publicly voted to issue a Statement of Charges against "Employee 974," whom staff and community members recognized as Petitioner. *Id.* ¶¶ 288–290.
- **Falsity.** The complaint pleads that the accusation was false, that Petitioner

never violated the policy, and that the complaints were "hearsay gossip" unrelated to unlawful harassment. *Id.* ¶¶ 112, 425, 434, 437, 440. The complaints themselves alleged nothing more serious than, "She gave me the silent treatment." Fifth Am. Compl. ¶ 434. A complainant testified under oath at the May 23, 2019 arbitration hearing that Petitioner had violated neither definition. *Id.* ¶ 348; Ex. 43b.

- **Plus.** On May 31, 2018 Petitioner was told she would serve an unpaid suspension; she served two unpaid days in January 2019; and she has been suspended without pay since April 26, 2019. *Id.* ¶¶ 21, 103–105, 172–178, 295.

The Commonwealth Court held that, "according to her own pleading, these statements were not made public either on social media or through other channels." Mem. Op. 31. It did not address paragraphs 112, 288–290, 425, or 431–432. The trial court reasoned that Petitioner "had sufficient opportunity to clear her name at both the *Loudermill* hearing and the Board hearing." *Id.* at 30 (quoting Trial Ct. Op., Jan. 15, 2021, at 18).

The records that could answer the accusation were then sealed. At the district's request, and citing the complainants' privacy, the trial court sealed HR's investigative reports. Mem. Op. 8, 12–13. As pleaded, those are the documents that list complaints amounting to "hearsay gossip" and identify no improper word or act by Petitioner. Fifth Am. Compl. ¶¶ 82, 343, 434. The "confidential" label thus kept the accusation in circulation while keeping from public view the records that would rebut it.

That reasoning fails for the reason given above: no one can clear her name of an accusation she is never told. A hearing that does not "present the broad battery of the allegations" against the employee leaves her with "no opportunity to defend [her]self fully." Such a hearing is "insufficient to allow [her] to refute the charges against [her] and clear [her] name." *Patterson*, 370 F.3d at 336. At every meeting the district held, Petitioner was refused the names of her accusers and the substance of

their accusations. *See* Statement, Part C.

II. THE COURT BELOW DECIDED THE FIRST AMENDMENT CLAIMS AGAINST PETITIONER ON THE PLEADINGS, AND NEVER ANALYZED HER PETITIONS OR HER UNION ASSOCIATION.

A. The employer's *Mt. Healthy* defense was accepted as proven.

Once a public employee shows that protected conduct was a substantial or motivating factor in an adverse action, the burden shifts to the employer. The employer must then show "by a preponderance of the evidence that it would have reached the same decision ... even in the absence of the protected conduct." *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 287 (1977). That is an affirmative defense, and the employer bears the burden of proving it.

The Commonwealth Court relieved the employer of that burden. It acknowledged that Petitioner's PSSA report "could pose a public concern." Mem. Op. 26. It then held that the district's own Statement of Charges "demonstrated" that the same action would have occurred anyway, reciting the charges as established facts. *Id.* at 26–28. A charging document written by the defendant is the defendant's account of its own motive. This one was written in May 2019, a year after the first suspension and after all four suspensions had already been imposed. It cannot show what motivated those earlier actions. And it came from the same district whose administrators had permitted the testing practice Petitioner reported. Fifth Am. Compl. ¶¶ 58, 244, 300. The court below recited its disputed accusations as fact, while the complaint's repeated allegations that each suspension was imposed without notice of the accusers or the evidence went unaddressed. *See* Statement, Parts C and E. Accepting it as proof at the pleading stage does more than read the complaint. It decides the central disputed fact against the plaintiff, before discovery.

The complaint pleads a pattern a factfinder could readily find retaliatory. Each

protected act was followed within days by escalation. Statement, Part D. The harassment complaint was signed the same day online news reported discipline for the very practice Petitioner had questioned. Fifth Am. Compl. ¶¶ 61, 67. The second suspension came hours after the union sent her grievance to arbitration, and one day after another "Distinguished" evaluation. *Id.* ¶¶ 168, 170–172. Whether the district's stated reasons were genuine or pretext is a question of fact. *See Baldassare v. New Jersey*, 250 F.3d 188, 195 (3d Cir. 2001).

The court also faulted Petitioner because she "did not allege that she reported the issue publicly or even to the school community." Mem. Op. 25. But the complaint pleads that the district acted to keep her from reporting the testing practice to state authorities. Fifth Am. Compl. ¶¶ 118, 120. The court itself described that allegation as "a concerted effort ... to 'silence her' from reporting the alleged violations to state testing authorities." Mem. Op. 25–26.

What matters is the employer's motive. An employer that acts "out of a desire to prevent the employee from engaging in" protected activity violates the First Amendment, and the employee may sue under § 1983. *Heffernan v. City of Paterson*, 578 U.S. 266, 273 (2016). The court recited the balancing test of *Pickering v. Board of Education*, 391 U.S. 563, 568 (1968), but never applied it. Mem. Op. 24. Nothing in the complaint suggests that reporting a possible testing violation disrupted the school's operations.

The district has argued that reporting a testing concern was simply part of Petitioner's job. Neither court below adopted that argument, and the Commonwealth Court accepted that her report "implicated First Amendment concerns." Mem. Op. 26. The argument would not resolve the case in any event. Speech loses protection under *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006), only when it is made "pursuant to" the employee's official duties, and the listing of a task among an employee's duties "is neither necessary nor sufficient" to make it so. *Id.* at 424–25. "The critical question

under *Garcetti* is whether the speech at issue is itself ordinarily within the scope of an employee's duties, not whether it merely concerns those duties." *Lane v. Franks*, 573 U.S. 228, 240 (2014). Whatever her duties as a test administrator, petitioning the Board about closed-session decisions and asking the district attorney to investigate were no part of a teacher's job, and the escalations followed those petitions as well. *See* Statement, Part D. At the least, the scope of her duties is a question of fact that cannot be resolved against her on the pleadings.

B. Petitioner's petitions for redress were never analyzed as petitions.

The right to petition is "one of the most precious of the liberties safeguarded by the Bill of Rights." *BE&K Constr. Co. v. NLRB*, 536 U.S. 516, 524 (2002) (quoting *United Mine Workers v. Illinois State Bar Ass'n*, 389 U.S. 217, 222 (1967)). A public employee's petition is protected when it addresses a matter of public concern. *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 398 (2011).

Petitioner asked the local district attorney to investigate the district, and reported to the Board and the district attorney that the Board was deciding discipline in closed sessions. Fifth Am. Compl. ¶¶ 235, 414–415; Exs. 24a–24e, 57a–57b, 58. Whether a school board is conducting public business in secret, in violation of a statute that makes the violation an offense, is a matter of public concern. *See* 65 Pa.C.S. § 714; *Lane v. Franks*, 573 U.S. 228, 241 (2014).

The court below held otherwise only by examining Petitioner's motive, finding she sought to "combat what she perceived as actions taken on her case." Mem. Op. 27. But public concern turns on "the content, form, and context of a given statement, as revealed by the whole record." *Connick v. Myers*, 461 U.S. 138, 147–48 (1983). A citizen's report of official misconduct does not lose protection because the citizen was also personally affected. The district's own letter had already declared her situation "not a matter of public concern." Ex. 25. The court below adopted the employer's characterization rather than testing it.

C. The restrictions on Petitioner's union association were never addressed.

"The public employee surely can associate and speak freely and petition openly, and he is protected by the First Amendment from retaliation for doing so." *Smith v. Arkansas State Highway Emps., Local 1315*, 441 U.S. 463, 465 (1979) (per curiam).

The court treated her outreach to union colleagues as "the kind of personal employment issues" the First Amendment does not protect. Mem. Op. 26. It never analyzed these restrictions as burdens on association.

That holding conflicts with the federal court of appeals for Pennsylvania. The Third Circuit has held that membership in a public union is "always a matter of public concern," so a union association claim does not have to make the separate public-concern showing that a speech claim does. *Palardy v. Township of Millburn*, 906 F.3d 76, 83 (3d Cir. 2018). It applied that rule to a Pennsylvania school district employee retaliated against for his union activity, and said it applies with particular force to union leaders. *Baloga v. Pittston Area Sch. Dist.*, 927 F.3d 742 (3d Cir. 2019). Petitioner was her building's union representative and a member of the union's representative council. Fifth Am. Compl. ¶ 27. She was warned that contacting bargaining-unit members who had taken part in the investigation "could be construed as retaliation," the charge on which she was later suspended, and she was then barred from union meetings. *Id.* ¶¶ 237, 293; Ex. 25. The Commonwealth Court dismissed her association claim for lack of public concern, the very showing the Third Circuit does not require. Mem. Op. 26. As with *Schmidt*, a Pennsylvania public employee would have this claim in federal court and not in state court. *See* Sup. Ct. R. 10(b).

The complaint pleads that the district probed and restricted Petitioner's union activity while keeping secret who accused her of retaliation and what she supposedly said or did:

- **Questioned about union activity while kept in the dark.** On April 18, 2019, eleven months after she was first told of a "confidential" complaint, the district

held what it called a "Loudermill hearing." District counsel questioned her about union meetings and union emails. He suggested that someone alleged improper conduct, but "refused to state who was making such an allegation and what specific allegation was being alleged." Fifth Am. Compl. ¶¶ 281–284. Five days later the Superintendent recommended dismissal for retaliating against colleagues. She and HR said they "weren't prepared" to give the names or specifics. *Id.* ¶ 285. Petitioner could not dispute what she was never told.

- **Warned against contacting coworkers.** She was directed to stop contacting bargaining-unit members who had taken part in the investigation, "even as a witness," and warned that doing so "could be construed as retaliation." *Id.* ¶¶ 237, 405; Ex. 25.
- **Barred from union meetings.** She was then barred from union meetings on school property. *Id.* ¶ 293; Ex. 35.

She told the trial court: "I can't go to my union meeting, I can't step on school property, I must be dangerous. If [I] am dangerous tell me what I did." N.T. 12/12/22 at 37:16–19.

The district will say the March 11 directive protected witnesses. Its reach and its own words say otherwise. Those who had participated in the investigation, "even as a witness," were not a small group. The local union president attended HR's meeting with the complainants and received her own copy of the Finding. Fifth Am. Compl. ¶¶ 75, 112. HR questioned "almost everyone that worked at Benner" about Petitioner. *Id.* ¶ 234. The directive thus cut her off from her union's leadership and most of her building while her grievance was pending. The same letter declared her situation "not a matter of public concern," Ex. 25, a judgment about the content of her speech rather than a measure to protect witnesses. And the later bar from union meetings on school property was not limited to witnesses at all. Fifth Am. Compl. ¶ 293. Whether a restriction of that breadth was justified calls for *Pickering* balancing on a factual

record. It cannot be resolved against Petitioner on the pleadings.

The district used the same label to punish Petitioner for preparing a defense. Unable to learn what she was accused of, she gathered twenty-three character letters from colleagues, school specialists, and former student teachers and gave them to the Board at her twenty-minute August 2018 Board grievance session. Fifth Am. Compl. ¶¶ 130–132, 140; Exs. 4a–4w. The district's Statement of Charges, on which the court below relied, Mem. Op. 27–28, then cited those letters as proof that she had violated confidentiality:

> "At that time, you submitted information on your behalf which eluded [sic], among other things, letters from several people who in their letters addressed specifically the issue of harassment. In order for them to state something to the effect that you would not engage in harassment or unlawful harassment, means that you had to discuss the issue with them. ... By discussing this with other people shows that you did not abide by District Policy or directives to maintain confidentiality."

Ex. 37 at 3. A policy that keeps the accusation from the employee, and then treats her request for character evidence as misconduct, leaves her no way to defend herself.

D. Private parties who act jointly with officials act under color of law.

The court dismissed the claims against the local union president and the teacher-defendants because they "held no authority under state law." Mem. Op. 22 n.15; *see id.* at 29 n.19, 31 n.21. But authority is not the test. "Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of § 1983 actions." *Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970).

The complaint pleads joint action. The union president attended HR's meeting with the complainants. Fifth Am. Compl. ¶ 75. She arranged for the complainants

to attend the meeting at which she confronted Petitioner. ¶ 192. She arranged for a school police officer to be present the next day, which the complaint alleges required the Superintendent's permission. ¶¶ 207–208 & nn.29–30. She was "informed about every action" by the Superintendent, ¶ 398, and she conspired with the Superintendent to cut Petitioner off from her union, ¶¶ 268, 272. The court below recognized these allegations. It described the complaint as alleging that Petitioner's PSSA report "led to a concerted effort by Saylor, Simpson, and the Board to manufacture other teachers' complaints against Kipp to 'silence her.'" Mem. Op. 25–26. It noted her belief that the suspensions were "conspiratorial, premeditated, and ordered by the Board in a private meeting." *Id.* at 4. It acknowledged that she alleges conspiracy "generally throughout the Fifth Amended Complaint regarding all her claims." *Id.* at 42 n.24. Yet it never asked whether those allegations plead joint action under *Dennis*. It declared them "moot" because it had already rejected the underlying claims. *Id.* Under *Dennis*, the allegations of joint action were part of what made the claims viable against the private defendants. They could not be moot.

III. STATE PROCEDURAL RULES WERE USED TO DEFEAT FEDERAL CLAIMS, CONTRARY TO THIS COURT'S DECISIONS.

State courts must enforce § 1983 as Congress wrote it. A state may not apply rules that burden the federal right or that would predictably produce a different outcome than the same claim would receive in federal court. *Felder v. Casey*, 487 U.S. 131, 138, 141 (1988); *see Haywood v. Drown*, 556 U.S. 729, 736–41 (2009); *Howlett v. Rose*, 496 U.S. 356, 375–76 (1990). The "federal right cannot be defeated by the forms of local practice." *Brown v. Western Ry. of Ala.*, 338 U.S. 294, 296 (1949). Two such rules were applied here.

A 30-day limitations period. The Commonwealth Court held that Petitioner's allegations of closed-session decisions, pleaded as part of her § 1983 due process claim,

were untimely under the Sunshine Act's 30-day limit. Mem. Op. 22–23. But a § 1983 claim is governed by the forum state's general personal-injury limitations period. *Owens v. Okure*, 488 U.S. 235, 249–50 (1989); *Wilson v. Garcia*, 471 U.S. 261 (1985). In Pennsylvania that period is two years. 42 Pa.C.S. § 5524. Petitioner sued within a year of the 2019 suspensions. Importing a 30-day deadline from a state statute is the kind of burden *Felder* forbids: in *Felder* itself, the Court struck down a 120-day notice requirement. 487 U.S. at 141.

Exhaustion of a union-controlled arbitration. The trial court held that Petitioner's due process claims failed because her grievance arbitration was not complete when she sued. Trial Ct. Op., Jan. 15, 2021, at 6–7. But "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." *Patsy v. Bd. of Regents*, 457 U.S. 496, 516 (1982). Nor can collective-bargaining arbitration substitute for the judicial proceeding § 1983 guarantees, because "[t]he union's interests and those of the individual employee are not always identical or even compatible." *McDonald v. City of West Branch*, 466 U.S. 284, 291 (1984). The dismissal with prejudice rested on the trial court's opinion, and the Commonwealth Court affirmed without disavowing the exhaustion holding. Mem. Op. 15, 43.

This case shows why *McDonald* matters. Under Pennsylvania law the union, not the employee, decides whether and how a grievance goes to arbitration. Fifth Am. Compl. ¶ 275. A teacher-defendant spoke against sending Petitioner's grievance to arbitration. ¶ 193. The union president moved to remove Petitioner from union committees at a meeting she could not attend. ¶¶ 253–255. At arbitration, the union's attorney took these steps:

- appeared over her objection as "exclusive representative" (¶¶ 322–323);
- joined the district in opposing her request to have her own counsel present (¶ 339).

Petitioner does not ask the Court to decide how public-sector grievance systems must be structured. The point is narrower. A process controlled by people she alleges acted against her cannot be both the "process" she was due and a gate she had to pass through before suing under § 1983.

This Court reinforced the point in 2025. In *Williams v. Reed*, 604 U.S. 168 (2025), a state supreme court had dismissed § 1983 claims because the plaintiffs had not exhausted a state administrative process. This Court reversed. Relying on *Felder*, it held that "a state law that immunizes government conduct otherwise subject to suit under § 1983 is preempted," even when applied in state court. *Id.* (quoting *Felder*, 487 U.S. at 139).

Williams arose from claims challenging delay in the administrative process itself. Its reasoning, and *Patsy*'s rule, apply with full force here. A state court required a public employee to finish a grievance arbitration, controlled by a third party, before suing over the very deprivation that arbitration was supposed to remedy. Delay was present here too. Twenty months after her first grievance, it remained unresolved, and her later grievances still had no hearing dates. Fifth Am. Compl. ¶ 396; *see* Ex. 46 (district's request, granted, to extend its brief to January 31, 2020).

IV. THIS CASE IS A SUITABLE VEHICLE.

The case arises on the pleadings, so the facts are fixed by the complaint and the questions are purely legal. The Commonwealth Court decided each federal question on the merits, and Petitioner preserved each at every stage. *See* Statement, Parts E–F.

No state-law ground supports the judgment. The Commonwealth Court vacated the trial court's procedural dismissal and decided each federal claim on the merits. Mem. Op. 14–31. Its rulings on high public official immunity, defamation, and emotional distress concern only state-law claims, which this petition does not ask the Court to review. *Id.* at 31–42. The Sunshine Act ruling applied a state deadline to

allegations pleaded within the federal due process claim. Whether a state limitations period may govern a § 1983 claim is itself a federal question. *Owens*, 488 U.S. at 249–50. The Commonwealth Court did not repeat the trial court's exhaustion holding, but it affirmed a dismissal with prejudice that rested on the trial court's opinion applying it. Mem. Op. 15, 43.

The procedural history does not obstruct review. The Commonwealth Court vacated the dismissal to the extent it rested on pleading-form rules. It found that the respondents could discern the claims and answer them, and that the court itself could read the complaint. Mem. Op. 14–15.

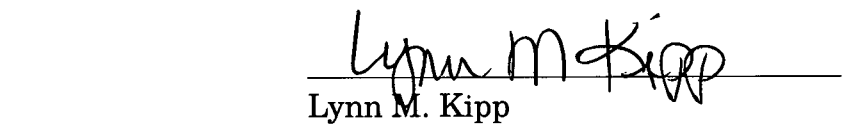
Petitioner has litigated pro se, and her pleadings are entitled to "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). She has been suspended without pay since April 2019 without any court examining the district's evidence. The questions presented recur wherever public employees bring § 1983 claims in state court.

CONCLUSION

The courts below measured due process by how many meetings Petitioner attended. This Court's precedents measure it by what she was told before each deprivation. Before each of four suspensions she was refused the names of her accusers and the evidence against her, and each new suspension followed her union activity or a petition for redress. Fifth Am. Compl. ¶¶ 165, 398.

The petition for a writ of certiorari should be granted. In the alternative, the Court should summarily vacate the judgment and remand for application of the correct federal standards. *See Tolan v. Cotton*, 572 U.S. 650 (2014) (per curiam); *Erickson v. Pardus*, 551 U.S. 89 (2007) (per curiam).

Respectfully submitted,



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