

No. 26-156

IN THE
Supreme Court of the United States

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

v.

BROOKE HENDERSON AND JENNIFER LUMLEY,
Respondents.

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

**BRIEF OF AMICI CURIAE
PUBLIC SCHOOL ORGANIZATIONS IN
SUPPORT OF PETITIONERS**

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INTEREST OF AMICI CURIAE¹

The National School Attorneys Association (NSAA) is a non-profit membership organization of attorneys who advocate on behalf of elementary and secondary public-school districts across the United States. NSAA's approximately 1,000 members regularly advise public school districts on legal and constitutional issues affecting their operations.

The School Superintendents Association (AASA) is the professional organization for more than 10,000 educational leaders in the United States and beyond. AASA members range from chief executive officers, superintendents and senior school administrators to cabinet members, professors, and aspiring school-system leaders. AASA members shape policy, oversee its implementation, and represent school districts to the public at large.

The National School Boards Association (NSBA) seeks to ensure that every student has access to excellent public education governed by high-performing school board leaders and supported by the community. A non-partisan association founded in 1940, NSBA works with member state associations and school districts, affiliates, and stakeholders across the country to advocate for high-quality public

¹ No counsel for a party authored this brief in whole or in part. No party, counsel for a party, or any person other than amici curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief. Amici are filing this brief earlier than 10 days before the due date.

education and school board governance with the executive, legislative, and judicial branches.

The Consortium of State School Boards Associations (COSSBA) is a nonpartisan, national alliance of 27 state school board associations that represent over 7,500 school boards, comprising 52,000 members who work in service to nearly 27 million students. COSSBA is dedicated to sharing resources and information to support, promote, and strengthen state school board associations as they serve their local school districts and board members.

The Missouri School Boards Association (MSBA) is a private, voluntary association of Missouri public school governing bodies. MSBA adheres to the local control model of public school governance, in which local entities are responsible for the messaging they use in accomplishing their mission.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Eighth Circuit's sharply divided 6-5 decision improperly presents school districts and other public employers with the threat of litigation whenever an employee objects to training on a policy that the employee happens to disagree with. Public employers across the country have policies on a virtually infinite range of subjects and often seek to bolster those policies by providing employees with training. That crucial and wholly quotidian activity furnishes no basis for a First Amendment claim. In its contrary ruling, the decision below threatens to open the

floodgates to litigation by disgruntled employees who object (even if only silently) to an aspect of their employer's policies and training. This Court should grant review and reverse the court of appeals' misguided and consequential decision.

A. School districts and other public entities perform a huge range of challenging and vital functions. In so doing, they necessarily adopt myriad policies on important workplace matters, which may encompass, for example, emergency preparedness and workplace (and school) safety, ethics and workplace expectations, civil rights, privacy and data security, and any number of other subjects. Indeed, in many cases, policies on these and other topics are mandated by law.

B. Likewise, when a public entity adopts a workplace policy, it will very often conduct training for its employees regarding that policy. Again, federal and state laws in many jurisdictions frequently impose such training requirements, as training helps to ensure that employees properly understand the employer's policy and are thus more likely to faithfully follow it. And as courts have recognized, the employer is entitled to make its training mandatory for agency personnel, and to test employees to make sure they have properly understood the material.

C. The nature of these policies and trainings is inherently such that some employees may disagree with their content. Trainings in such areas as active shooter policies, sexual harassment policies, policies regarding racially insensitive remarks, and (for school districts in particular) policies on pedagogical

approaches, just to name a few, are matters that can naturally give rise to disagreement even among well-intentioned people. But a school district or other public employer, within the broad confines of applicable law, is entitled to select its preferred approach to such issues in the workplace and to train and test its staff on the chosen policy.

D. Under the Eighth Circuit’s decision, a school district employee’s objection to an aspect of training regarding any underlying workplace policy that the employee has a disagreement with (even if entirely unexpressed) gives rise to a basis for a First Amendment challenge. As Chief Judge Colloton and four other Judges emphasized in dissent, a “public employer is” indisputably “entitled to maintain policies with which some employees disagree,” yet the en banc majority’s “theory ... make[s] it impractical for public employers to test employees on their knowledge of organization policy without facing lawsuits for supposedly” impinging on “employee speech.” Pet. App. 30a-31a. If the decision below is left undisturbed, school districts and others will be forced to step gingerly in crafting employee training, and “[p]ublic employee training will ... be fraught with uncertainty.” Pet. App. 32a (Colloton, C.J., dissenting). The impact in the school context is likely to be especially severe; school districts are unique among public employers because so many employees, including teachers and others, are conveyors of the employer’s message as part of their jobs. This Court’s review is urgently needed in light of the grave, real-world consequences that the decision below threatens to inflict on school districts and other public employers.

ARGUMENT

I. An Employee's Disagreement With A Public Employer's Policy Provides No Basis For A First Amendment Suit And The Decision Below Threatens Disruption Far Beyond This Case.

A. Public employers including school districts typically have workplace policies covering a wide range of important subjects.

School districts and other public employers perform complex, varied, and critical functions. In so doing, they necessarily promulgate policies governing a broad array of highly significant workplace matters. The examples below represent only a subset of currently existing policies that public employers have adopted.

1. Emergency preparedness and workplace safety.

Employers (both public and private) often have emergency action plans setting out reporting and evacuation policies to be followed in the event of a fire or other emergency. In California, for example, a public or private employer with more than ten employees must create a written emergency plan that “cover[s] those designated actions employers and employees must take to ensure employee safety.” Cal. Code Regs. tit. 8, § 3220(a); *see* Cal. Lab. Code §§ 3300, 6304. New York law requires “public employer[s] in the state of New York” to “prepare a

plan for the continuation of operations in the event that the governor declares a state disaster emergency” resulting from a communicable disease. N.Y. Lab. Law § 27-c(2); *see also, e.g.*, Vt. Stat. Ann. tit. 16, § 1481 (school districts must conduct fire drills twice a year).

Other emergency policies may be tailored to specific local risks. Schools in midwestern states often have policies in place for handling tornadoes. *See, e.g.*, Ohio Rev. Code Ann. § 3737.73(B) (schools must teach students what to do in the event of a “tornado alert or warning”); Martin Pub. Schs., *School Safety*, <https://perma.cc/4A6L-LT24> (last visited Aug. 11, 2026) (specifying that schools in this Michigan district must conduct two tornado drills per year). Under state law, Washington schools located in tsunami-hazard zones must conduct special evacuation drills. Wash. Rev. Code § 28A.320.125(5)(c)(i). Schools in Washington and other West Coast states must also plan for earthquakes. *See id.* § 28A.320.125(5)(c)(ii) (schools must adopt “state-approved earthquake safety” policies); Or. Rev. Stat. §§ 339.408(4)(b), (5)(b) (similar); Cal. Educ. Code § 32282(a)(2)(B)(i) (similar). Other localities have analogous policies for responding to hurricanes, snowstorms, or, in general, power outages. *See, e.g.*, Mo. Rev. Stat. § 170.315(3)(e) (school districts must train employees on “[p]rotocols for emergencies in the school including, but not limited to[,] ... [s]evere weather”); Va. Code § 22.1-279.8(A), (D) (requiring plans addressing “severe weather” and “loss or disruption of power”).

A public employer’s workplace safety policies may likewise address threats of violence, like active

shooters. *See, e.g.*, Mo. Rev. Stat. § 170.315 (requiring school districts to provide staff training on armed-intruder scenarios); Wash. Rev. Code § 28A.320.125(5)(b)(ii) (schools must conduct “[l]ockdown” drills to teach students and staff “to isolate [themselves] from threats of violence, such as ... armed intruders”); Md. Code, Educ. § 7-1509(a)(1) (authorizing the state Department of Education to “adopt regulations to incorporate” active shooter drills); N.D. Dep’t Pub. Instruction, *Armed First Responder Program* (2026), <https://perma.cc/U48P-KJ9A> (procedures for schools seeking to “add[] an [Armed First Responder Program] to their ... school safety plan”).

Public employers also have policies designed to address workplace safety more generally, which may encompass threatening behavior, like stalking, in addition to outright physical violence. *See, e.g.*, Mississippi State Personnel Board, *Mississippi State Employee Handbook* 31, § 5.10 (2025), <https://perma.cc/2HYZ-NDZ2> (requiring state employers to “provide a safe workplace environment for employees that is free from violence”); *Workplace Violence Policy*, State of Wyoming Executive Department Executive Order 2025-03 (adopting no-tolerance workplace violence policy and mandating “procedures implemented pursuant to this policy”); N.Y. Lab. Law § 27-b(4) (requiring “written workplace violence prevention program[s]”); N.Y. Dep’t Lab., *Workplace Violence Prevention Act* (2024), <https://tinyurl.com/2ey2xcea>; Cal. Lab. Code § 6401.9 (requiring California employers to implement written workplace violence prevention plans).

School districts, which are responsible for children’s safety and well-being, typically adopt additional safety policies specifically addressing the school context, such as anti-bullying, child abuse detection and reporting, and suicide prevention policies. *See, e.g.*, Idaho Code § 33-1631(2) (requiring school districts and charter schools to “provide ongoing professional development ... to prevent, identify, and respond to harassment, intimidation or bullying”); Little Rock Sch. Dist., *Anti-Bullying Policy*, <https://perma.cc/L6GA-RWKD> (last visited Aug. 11, 2026) (defining, prohibiting, and specifying responses to bullying); Kimberly Sch. Dist., *Policy 3237 Violence Prevention including “Bullying/Harassment Behavior”*, <https://perma.cc/8S9L-39TA> (last visited Aug. 11, 2026) (similar); West Ada Sch. Dist., *Child Abuse Reporting*, <https://perma.cc/HS4S-M7CC> (last visited Aug. 11, 2026) (staff members must “intervene and protect students from child abuse”); Va. Code § 63.2-1511(D) (“Each local department and local school division shall adopt a written interagency agreement as a protocol for investigating child abuse and neglect reports.”); Rockingham Cnty. Pub. Schs., *Child Abuse and Neglect Reporting* (2025), <https://perma.cc/RH52-ZMSZ> (employee who “suspect[s] that a child is ... abused or neglected” must “report the matter immediately”); Chicago Pub. Schs., *Comprehensive Mental Health and Suicide Prevention* (2022), <https://perma.cc/Q8YP-62KK> (policy on preventing and addressing “mental health issues such as depression and suicidality”); Okla. Stat. tit. 70, § 24-100.7 (mandating suicide awareness and prevention training for Oklahoma public school staff); Union

Pub. Schs., *Suicide & Crisis Intervention* (2023), <https://perma.cc/97B8-NV78> (requiring intervention teams to address student mental health crises).

2. Ethics and workplace expectations.

Many public employers also promulgate policies governing professionalism and basic expectations regarding employees' on-the-job conduct. The City of Austin, Texas, just as one example, has adopted a policy defining and prohibiting "unprofessional" acts, *see* City of Austin, *Personnel Policies* ch. A, at 4 (2025) <https://perma.cc/3UPW-FELK> (prohibiting "behavior or language that is disruptive, unprofessional, offensive, threatening, or disrespectful"); a policy regulating the solicitation and acceptance of gifts, *see id.* at 8 (employees may not "solicit funds for any purpose on the job" without express approval); a policy mandating that employees report potential conflicts of interest, *see id.* (employees must remain "independent" and "impartial," and must report "real or perceived" conflicts of interest); a policy addressing employees' political activity, *see id.* at 7 ("executives" may not participate in, or donate to, city council campaigns); and a policy banning workplace romantic relationships "within a supervisory chain," *id.* at 5. Other state and local government entities embrace similar policies.²

² *See, e.g.,* Ga. Dep't Hum. Servs., *Policy and Manual Management System* § 1201 (2026), <https://perma.cc/9NV5-9SUF> ("Employees must conduct themselves in a manner that prevents all forms of impropriety, placement of self-interest

School districts also often issue policies regulating relationships between staff and students. For instance, public schools in Portland, Maine, prohibit staff from engaging in, among other things, sexual contact with current students and with former students under the age of twenty-two. See Portland Pub. Schs., *Staff Conduct with Students* (2026), <https://perma.cc/4LGD-9C4H>. A similar policy adopted by Millard Public Schools in Nebraska applies to relationships with former students “within one year of the student’s graduation date or within one year from the date the student ceases enrollment.” Millard Pub. Schs., *4153.1: Professional Boundaries and Staff Relationships with Students* (2020), <https://tinyurl.com/5tz7w4xr>.³

above public interest, partiality, prejudice, threats, favoritism, and undue influence.”); N.C. Gen. Stat. § 138A-32 (no-minimum gift ban for public servants); Prince George’s Cnty. Gov’t, *Fraternization Policy* (2016), <https://tinyurl.com/3s5nampa> (prohibiting “extended relationships between employees who are in a supervisory/subordinate position”); Del. Dep’t Hum. Res., *Anti-Nepotism Policy and Procedures* (2024), <https://perma.cc/2GZK-RNL8> (prohibiting state employees from “participat[ing] in or attempt[ing] to influence any process relating to the hire, promotion, or other hiring of an immediate relative at the State agency”).

³ School districts also frequently feature specific policies governing student conduct, such as policies on using personal electronic devices. Public high school students in Minneapolis, for example, must “secure” their personal devices unless certain exceptions apply. See Minneapolis Pub. Schs., *Policy 5210: Student Personal Electronic Devices* (2015), <https://perma.cc/XJM2-Q7RG>. West Fargo Public Schools in

3. Civil rights.

In addition, public employers typically enact policies addressing discrimination based on protected characteristics, including race and gender. Salt Lake City Policy 51-17-2, for instance, prohibits discrimination on the bases of “race, color, [and] national origin,” among several other grounds. *See* Am. Legal Publ’g, *Anti-Discrimination and Harassment* (2018) <https://tinyurl.com/57dcrepk>. School districts likewise often have policies enforcing Title IX. *See, e.g.*, Sch. Dist. Philadelphia, *Notice of Nondiscrimination* (2026), <https://perma.cc/MM5N-4Y6F> (policy against sex-based discrimination in compliance with Title IX); Albuquerque Pub. Schs., *Title IX*, <https://tinyurl.com/4422cju3> (last visited Aug. 11, 2026) (similar).

Relatedly, public (and private) employers often have policies prohibiting sexual harassment. *See, e.g.*, Cal. Gov’t Code §§ 12926(d), 12950(a)(3) (employers must “ensure a workplace free of sexual harassment”); City of Muskegon, *City Policies Employee Policy Handbook: Sexual Harassment Policy and Procedures*, <https://perma.cc/Q9BY-TLLL> (last visited Aug. 11, 2026) (“[S]exual harassment will not be tolerated among, by, or toward City employees.”); Ala. Admin. Code r. 580-6-34-.13 (prohibiting sexual harassment). School districts are

North Dakota similarly has a policy requiring students to turn off their phones and to leave them somewhere “inaccessible during the school day.” West Fargo Pub. Schs., *ACFG-AP: Personal Electronic Devices Prohibition During the School Day* (2025), <https://perma.cc/4X6A-RVWE>.

no exception. *See, e.g.*, Missoula Cnty. Pub. Schs., *Title IX Information*, <https://perma.cc/5CKL-EBRS> (last visited Aug. 11, 2026) (prohibiting sexual harassment as “a form of sex discrimination”); Pierre Sch. Dist. 32-2, *Certified Policy Handbook* 65-68 (2025), <https://perma.cc/LB9M-XNJB> (prohibiting sexual harassment and prescribing reporting and investigation procedures). Also common are policies setting out the employer’s processes for accommodating disabilities. *See, e.g.*, Kentucky Personnel, *State ADA Plan*, <https://perma.cc/NSD6-C7BD> (last visited Aug. 11, 2026) (detailing Kentucky’s ADA implementation for its own employees); Alaska Dep’t Admin., *ADA Compliance Program*, <https://perma.cc/C6HF-4R9K> (last visited Aug. 11, 2026) (similar); *see also, e.g.*, Concord Sch. Dist., *Section 504*, <https://perma.cc/UBJ4-B6C9> (last visited Aug. 11, 2026) (describing student eligibility for individual education programs); Madison Metropolitan Sch. Dist., *IEP Process*, <https://perma.cc/43QR-HUKF> (last visited Aug. 11, 2026) (similar).

4. Privacy and data security.

To ensure confidentiality and availability, it is also not unusual for public employers to adopt policies to safeguard their data and information technology. *See, e.g.*, Fla. Stat. § 282.3185(4)(a) (local governments must adopt “cybersecurity standards” consistent with “generally accepted best practices”); W. Va. Code §§ 5A-6B-2 to 5A-6B-4 (similar requirements for state and local government entities); Tenn. State Gov’t, *State Government Cybersecurity*, <https://tinyurl.com/e3nrzfbn> (last visited Aug. 11,

2026) (requiring all state employees to take annual cybersecurity awareness training). Many school districts have put in place similar policies to protect student data. *See, e.g.*, Los Angeles Unified Sch. Dist., *Information Technology Services*, <https://tinyurl.com/4j5vnycw> (last visited Aug. 11, 2026) (mandating annual employee “cybersecurity awareness training”); S.C. Dep’t Ed., *Memorandum Re: Breach Notification and Cybersecurity Best Practices* (2025), <https://perma.cc/92F2-Q9NY> (encouraging “all districts to review and implement ... cybersecurity best practices”). Public entities commonly have related policies specifically addressing cyber threats. *See, e.g.*, N.C. Gen. Stat. § 143B-1379(a) (agencies “shall cooperate with the State CIO” to report and respond to “cybersecurity incidents”); Mont. Code Ann. § 2-6-1504 (requiring notification of the Chief Information Security Officer “[o]n discovery ... of a security incident”); Kan. Stat. Ann. § 75-7244 (similar reporting requirement).

Finally, numerous public employers have also crafted policies governing how employees use workplace technology. *See, e.g.*, City of Providence, *5.2 Laptop Computer and Mobile Device Policy* (2026) <https://perma.cc/6KQG-PCBN> (“Devices are City property and must be used primarily for City business purposes.”); City of Cedar Rapids, *Personnel Policy Manual § 1, No. 1.09: Computer Software Usage* (2009), <https://perma.cc/BGU8-E4R8> (regulating the use of software licensed by the city). In the context of school districts, such policies may also cover students’ use of school technology. Boston Public Schools and Scottsdale Unified School District, for example, both have policies specifying that students are to use

school technology resources for “educational purposes” only. See Boston Pub. Schs., *Using Technology in School*, <https://perma.cc/8URV-PZX4> (last visited Aug. 11, 2026); Scottsdale Unified Sch. Dist., *Technology and Networking Resource Protocols*, <https://perma.cc/KB7S-S25D> (last visited Aug. 11, 2026).

B. Public employers are entitled and often required to have workplace policies and to train their employees regarding them.

Public entities employ numerous different categories of workers. School district personnel, for instance, may include teachers, principals, administrators, custodial staff, medical staff, guidance counselors, athletic coaches, bus drivers, security guards, information technology specialists, and financial and contracting personnel, among others. Each of those positions may necessitate the adoption of a policy tailored to specific job functions. And some employees in each category likely act as supervisors, which may further trigger the need for additional policies for managers.

Indeed, as many of the examples above illustrate, public employer policies touching on any number of subject areas and personnel categories are often dictated by federal, state, or local law. See, e.g., Wash. Rev. Code § 28A.320.125(1), (2) (“The legislature considers it to be a matter of public safety for public schools and staff to have current safe school plans and procedures in place,” and “[e]ach school district shall adopt and implement a safe school plan.”); Fla. Stat. § 282.3185(4) (“Each local government shall adopt

cybersecurity standards that safeguard its data ... to ensure availability, confidentiality, and integrity.”); 820 Ill. Comp. Stat. § 219/25 (requiring public employers to follow workplace safety policies that are at least as comprehensive as federal OSHA standards); N.J. Stat. Ann. §§ 34:6A-27, -30, -33 (same); 26 Tex. Admin. Code § 558.245(a) (state agencies “must adopt and enforce written staffing policies that govern all personnel”). Subject to applicable law, public employers are entitled to promulgate and tailor their policies to best serve their needs, priorities, and communities. *See, e.g.*, Del. Code Ann. tit. 19, § 1605 (“A public employer is not required to engage in collective bargaining on matters of inherent managerial policy which include, but are not limited to, such areas of discretion or policy as the functions and programs of the public employer, its standards of services, overall budget, utilization of technology, the organizational structure and the staffing levels, selection and direction of personnel.”); Del. Code Ann. tit. 14, § 4005 (same, but specific to public school employers).

Once a public employer has a policy on a particular subject, it is entitled to develop and deploy training for its employees regarding that policy. Again, in many instances, state law directs public agencies to conduct employee training on specified subjects. *See, e.g.*, Mo. Rev. Stat. § 170.315 (requiring emergency training for school employees); Mass. Gen. Laws ch. 268A, § 28 (requiring public employers to complete regular ethics trainings); Fla. Stat. § 282.3185 (“The Florida Digital Service shall ... [d]evelop a ... cybersecurity training curriculum for local government employees.”); Cal. Gov’t Code

§ 12950(a)(3) (requiring sexual harassment training). In many jurisdictions, state law also specifically requires police departments to train their staff on such topics as use of force, de-escalation, anti-bias, and interaction with persons with developmental disabilities. *See, e.g.*, Colo. Rev. Stat. § 24-31-315(1)(a); Conn. Gen. Stat. § 7-294s; Ind. Code § 5-2-1-9; Nev. Rev. Stat. § 289.510. And as to the school context, federal law imposes a variety of training requirements as well. *See, e.g.*, 42 U.S.C. § 1776(g); 7 C.F.R. § 210.30 (school nutrition training); 29 C.F.R. § 1910.1030(g)(2) (infection control training); 34 C.F.R. § 106.45 (2020) (sexual harassment training); 40 C.F.R. § 763.92 (asbestos training).

As courts have recognized, training allows public employers to ensure that their employees understand and follow the employer's edicts. *See, e.g., Keating v. Helder*, No. 08-5243, 2011 WL 3703264, at *5 (W.D. Ark. Aug. 23, 2011) ("More is encompassed in the notion of 'training' than simply making one's employees aware of a policy—it is incumbent upon superiors to train their subordinates that written policies are not mere window dressing—they are institutional practices the employees are expected to follow."). Absent training, it is possible (perhaps even likely) that employees will not develop a full understanding of their employer's policies, many of which may be vital to employees' ability to perform their job functions safely and effectively. And for similar reasons, public employers are entitled to make training mandatory; training that is merely optional is unlikely to be as effective as training that is required. Likewise, employers are entitled to test

employees as part of the training to help ensure that the employees have properly understood their employer's policies and procedures. In sum, in accord with applicable law, "a public employer may decide to train its employees" on an expansive array of policies, "it may establish the parameters of that training, and it may require employees to participate." *Altman v. Minn. Dep't of Corr.*, 251 F.3d 1199, 1203 (8th Cir. 2001); *see also, e.g., Schneider v. Carr*, 148 F.4th 438, 450 (7th Cir. 2025) ("[A] public employer enjoys significant latitude in crafting reasonable work regulations for its employees.").

C. The nature of public employer policies is inherently such that employees may sometimes disagree with them.

It is not uncommon for some employees in any large organization to disagree, perhaps strongly, with particular aspects of the employer's policies and training. The following are just a few concrete examples that may arise in the public-employer context.

1. Active shooter policies.

An active shooter policy may have a passive aspect involving hiding from the shooter until the police arrive. Other policies on the same topic might have more active components, which might encourage employees, if necessary, to confront the shooter and use physical force against them. *See, e.g., Healthcare & Public Health Sector Coordinating Council, Active Shooter Planning and Response* 21 (2017), <https://tinyurl.com/2vtmd4fs> (listing "[o]ptions for

consideration in developing [a] response plan”); Joe Hendry, *ALICE Training vs. Other Multi-Option Response Programs*, ALICE Training, <https://perma.cc/8EX8-YFYZ> (contrasting lockdown policies with multi-option responses).

An employee might in good faith disagree, even if only silently, with the balance that an employer’s policy strikes between different kinds of active shooter strategies. Each approach may have its own potential strengths and weaknesses. But the employer, subject to applicable law, is entitled to determine which policy it prefers, and then to train its employees to understand and follow that decision in the context of their official job duties.

2. Sexual harassment policies.

Many public employers (and private employers too) have policies on sexual harassment and provide mandatory employee training on those policies. Such trainings commonly ask employees to rate behavior—often depicted in on-line training videos of various workplace scenarios—on a color scale: green, yellow, orange, or red. *E.g.*, emtrain, *Workplace Color Spectrum Definition*, <https://perma.cc/H76T-4A6G> (last visited Aug. 11, 2026).

Green behavior in this setting is defined as “[r]espectful” and “positive,” raising no concerns. *Id.* Red behavior, at the other end of the spectrum, obviously crosses the line and is entirely improper. *See id.* In between those categories are yellow behavior, encompassing more ambiguous or borderline conduct, and orange behavior, signifying

conduct that is more clearly disturbing. *See id.* An employee might reasonably disagree with their employer's categorization of certain behavior as "yellow" instead of "orange," or the other way around, as the distinction between those labels may be relatively subtle depending on the circumstances. But the employer may define behavior as falling in one category versus another for purposes of its workplace, and is entitled to provide training to make sure its employees understand the difference.

Requiring the employee to mark the proper color rating as the correct answer to successfully complete and receive credit for the applicable training module infringes on no employee rights. The test is not asking the employee to contravene their personal or private beliefs; it is, rather, designed to ensure that the employee comprehends *the employer's* policies regarding on-the-job conduct.

3. Racial discrimination policies.

This case provides yet another example where an employee might disagree with facets of a public employer's policies and training, here in the context of race. As the decision below points out, there can be different approaches to confronting racially insensitive statements in the workplace, including schools. *See* Pet. App. 8a-9a. For instance, an employee who observes someone making improper racial comments could call out the offender on the spot and, in front of whoever else is present, tell the person that their remarks were inappropriate. Or, alternatively, the employee witnessing improper

conduct could wait and speak with the offending individual later in a more private setting. *Id.*

One could reasonably argue that both approaches are valid and come with their own advantages and disadvantages. For example, an immediate response might be less thought through and might cause public embarrassment. But a delayed response, while potentially more thoughtfully prepared and sensitively delivered, might not provide the salient response called for by the harmful behavior. *See id.*

Here, the employer made clear that it favored the more proactive approach to these kinds of incidents in its workplace. Pet. App. 8a-9a. The employer was entitled to select its preferred option, and to provide training to its employees regarding that approach. As the petition explains, the fact that an employee might sincerely view a different strategy as more effective (and the fact that at least one of the respondents in this case apparently held such a belief) does not mean that the employer has violated the law or that the employee can state a First Amendment claim based on the employee's disagreement (whether overt or silent) with the employer's view. *See* Pet. 22-34.

4. Instructional policies.

The school district setting provides further illustrations of potential employee disagreements with employer policies and training. Subject to applicable laws, school districts often have to make critical decisions about educational policy. Departments of education and individual school districts may set guidelines detailing how certain

subjects should be taught. Setting those policies may involve making fundamental choices among various competing approaches to teaching a given subject.

For example, when it comes to teaching children how to read, a debate exists between (1) those preferring the “science of reading,” a cognitive-science based approach emphasizing phonics instruction, and (2) advocates of the “balanced literacy” method, which focuses somewhat differently on ensuring that students understand the meaning of stories. *See, e.g.,* Sarah Mervosh, ‘*Kids Can’t Read: The Revolt That Is Taking On the Education Establishment*’, N.Y. Times (Apr. 16, 2023), <https://tinyurl.com/47jjc3ap>; Barbara R. Foorman, *Research on “The Great Debate”: Code-Oriented Versus Whole Language Approaches to Reading Instruction*, 24 Sch. Psych. Rev. 376 (1995) (describing the contours of the debate); National Reading Panel, *Teaching Children to Read* 2-92 (2005), <https://tinyurl.com/3ew6t3md> (concluding that “systematic phonics instruction” contributes more to “children’s growth in reading than alternative programs”).

An elementary school teacher might genuinely believe that one method is more effective than the other. But a school district is entitled to choose a particular teaching method, to train its staff to use that method, and to test its staff to ensure that they understand the district’s policy; indeed, a school district might be under mandatory policy and training directives imposed by state law. *See, e.g.,* David Casalaspi, Marisa Mission & Hailey T.N. Korman, *From Policy to Impact: North Carolina’s Implementation of the Science of Reading* 3 (2025),

<https://perma.cc/S7KT-ZRXF> (describing a North Carolina statute mandating that elementary school teachers complete training on the science of reading). Again, a teacher's expressed or unexpressed disagreement with the school district's chosen mode of pedagogy, even if conscientiously based, does not preclude the district from requiring the teacher to properly undertake and complete the requisite course of mandatory training.

D. The decision below improperly threatens public employers with the prospect of litigation whenever an employee objects to training on a policy the employee disagrees with.

As discussed above, public employers across the country have policies on a whole host of subjects and often seek to reinforce those policies by providing employees with training. That training is often mandatory and may include testing to help ensure that the employees properly comprehend their employer's policies and procedures.

That vital and commonplace activity does not violate the Constitution. Amici fully agree with Petitioners that there is no constitutional injury when an employer adopts a particular policy on a permissible subject and imposes a mandatory training requirement for its employees regarding its policy. Likewise, there is no requirement that an employee must personally agree with every aspect of a public employer's workplace policies. Training to ensure that employees understand a particular policy regarding on-the-job conduct and are thus more likely

to follow it in carrying out their official duties does not inflict any free-speech harm. *See* Pet. 22-34. As the en banc dissent put it, “[a]n employer does not injure an employee by failing to ‘welcome’ opposition to its policies,” and “does not cause Article III injury by declining to acquiesce in the contrary views of dissenting employees.” Pet. App. 31a (Colloton, C.J., dissenting). One can perhaps imagine an extraordinary setting where the employer invites an employee’s views and then exhibits extreme and aggressive hostility (with tangible consequences) to the employee’s opinions, but nothing in this case even remotely approaches that hypothetical scenario. Nor does this case implicate concepts of academic freedom that apply in the distinct context of colleges and universities. *See Edwards v. Aguillard*, 482 U.S. 578, 586 n.6 (1987).

The decision below fundamentally disregards that school districts must be able to fulfill their statutory obligations to enact policies and to provide commensurate training mandated by the state or their own priorities. Likewise, local school boards, governed by locally elected political leaders, must be able to craft the government’s own message, which then gets conveyed through employees. *See Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 908 (2018) (“Of course, if the speech in question is part of an employee’s official duties, the employer may insist that the employee deliver any lawful message.”). As this Court has recognized, “[g]overnment employers, like private employers, need a significant degree of control over their employees’ words and actions; without it, there would be little chance for the efficient provision of public

services,” *Lane v. Franks*, 573 U.S. 228, 236 (2014) (quoting *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006)), and “[r]estricting speech that owes its existence to a public employee’s professional responsibilities does not infringe any liberties the employee might have had as a private citizen,” *Garcetti* 547 U.S. at 421-22; see also *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 527 (2022). All of this is especially pertinent in the school context, where teachers and other employees propound the employer’s speech and message as part of their day-to-day job functions.

In nonetheless reversing the district court’s grant of summary judgment for the school district, the decision below threatens to open the floodgates to litigation by disgruntled employees objecting to training with respect to underlying policies with which they happen to disagree. Under the Eighth Circuit’s decision, a school district employee’s objection to an aspect of a training regarding an underlying workplace policy that the employee has a disagreement with (even if entirely unstated) provides a basis for a legal challenge under the First Amendment. The range of potential employee disagreements with employer policies is vast and open-ended; indeed, it is as broad as the range of policies themselves. The Eighth Circuit’s anomalous approach thus provides dissatisfied employees with their pick of countless, ready-made options for asserting and establishing First Amendment standing.

The potential ramifications of the court of appeals’ decision are enormous, and they are real, not

abstract. Again, public employers, including school districts, must be able to and often are required by law to enact policies and to train their employees on those policies. As Chief Judge Colloton—joined by four other Judges—correctly stressed, a “public employer is entitled to maintain policies with which some employees disagree,” yet the en banc majority’s “theory ... make[s] it impractical for public employers to test employees on their knowledge of organization policy without facing lawsuits for supposedly” infringing on “employee speech.” Pet. App. 30a-31a (Colloton, J., dissenting). If the decision below is left standing, school districts and others will be reduced to walking on eggshells in designing and administering employee training, and “[p]ublic employee training will ... be fraught with uncertainty.” *Id.* at 32a. “An employer who trains on any subject” will now be “subject to a federal lawsuit by an employee who,” whether expressly or covertly, “disagrees with the training.” *Id.*

Contrary to the en banc majority’s inherent premise, routine on-the-job training that is focused on workplace policies and that is provided as part of an employee’s official duties does not impinge on protected employee speech. “Does every public employee now suffer First Amendment injury if they are required to complete a training module by selecting answers with which they personally disagree? Surely not.” Pet. App. 38a (Shepherd, J., dissenting). Nor does an employee who declines to speak at a training session incur any legally cognizable chill because she perceives that “fellow trainees” and others might “disagree[]” with her views. Pet. App. 29a (Colloton, C.J., dissenting). The

uncertainty and detrimental impact that the Eighth Circuit's decision realistically threatens to impose on school districts and other public employers strongly support the case for this Court's review.

CONCLUSION

For the foregoing reasons and those stated in the petition, the Court should grant review and reverse the Eighth Circuit's decision.

Respectfully submitted,

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