No. 23-411

In The Supreme Court of the United States

VIVEK H. MURTHY, SURGEON GENERAL, ET AL.,
Petitioners,

v.

MISSOURI, ET AL.,
Respondents.

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

BRIEF OF *AMICA CURIAE* ANGELA READING SUPPORTING RESPONDENTS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

INTEREST OF *AMICA CURIAE* 1

SUMMARY OF ARGUMENT 3

ARGUMENT 6

I. MRS. READING'S EXPERIENCE SHOWS THE READINESS AND ABILITY OF GOVERNMENT ACTORS TO CENSOR AS WELL AS THE REAL AND LASTING HARM THAT RESULTS FROM GOVERNMENT CENSORSHIP. 6

A. Federal and State Government Actors Targeted Mrs. Reading's Protected Speech. 6

B. Government Officials Coerced a Private Citizen to Remove Mrs. Reading's Facebook Post. 8

C. Mrs. Reading and Her Family Suffered Due to Government Censorship and Retaliation for Her Protected Speech. 9

II. THE INJUNCTION PROPERLY PROTECTS POLITICAL DISCOURSE. 11

A. The Injunction Appropriately Protects Free Speech. 11

B. Injunctive Relief is Needed Because the Government Has Disregarded the Most Basic Protections of the First Amendment. 14

C. Speech Deemed "Controversial" is Entitled to the Same, if Not Greater, Constitutional Protections as Conventional Speech. 16

CONCLUSION 18

TABLE OF AUTHORITIES

Cases

303 Creative LLC v. Elenis,
143 S. Ct. 2298, 216 L. Ed. 2d 1131 (2023) 11

Abrams v. United States,
250 U.S. 616 (1919) 15

Ariz. Free Enterprise Club's Freedom Club PAC v. Bennett,
564 U.S. 721 (2011) 17

Ariz. v. Mayorkas,
143 S. Ct. 1312 (2023) 4

Brandenburg v. Ohio,
395 U.S. 444 (1969) 16

Buckley v. Valeo,
424 U.S. 1 (1976) 18

Citizens United v. FEC,
558 U.S. 310 (2009) 14, 17

Connick v. Myers,
461 U.S. 138 (1983) 12

Cox v. Louisiana,
379 U.S. 536 (1965) 15

Hill v. Colorado,
530 U.S. 703 (2000) 12

Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31,
138 S. Ct. 2448 (2018) 14

Lamont v. Postmaster General,
381 U.S. 301 (1965) 13

Mahanoy Area School District v. B.L.,
141 S. Ct. 2038 (2021) 15

Martin v. Struthers,
319 U.S. 141 (1943) 13

Mills v. Alabama,
384 U.S. 214 (1966) 12

Missouri v. Biden,
83 F.4th 350 (5th Cir. 2023) 2, 11, 13

Missouri v. Biden,
No. 3:22-CV-01213, 2023 WL 4335270
(W.D. La. July 4, 2023) 11

New York Times Co. v. Sullivan,
376 U.S. 254 (1964) 15, 17

Packingham v. North Carolina,
137 S. Ct. 1730 (2017) 13

Red Lion Broadcasting Co. v. FCC,
395 U.S. 367, (1969) 14

Schacht v. United States,
398 U.S. 58 (1970) 17

Snyder v. Phelps,
562 U.S. 443 (2011) 17

Sorrell v. IMS Health Inc.,
564 U.S. 552 (2011) 14

Stanley v. Georgia,
394 U.S. 557 (1969) 13

Terminiello v. Chicago,
337 U.S. 1 (1949) 17

Texas v. Johnson,
491 U.S. 397 (1989) 17

Va. State Bd. of Pharm. v. Va. Citizens Consumer Council,
425 U.S. 748 (1976) 13

Watson v. Memphis,
373 U.S. 526 (1963) 15

Whitney v. California,
274 U.S. 357 (1927) 14

Constitution

U.S. Const. amend. I 14

Other

John Milton, *Paradise Lost*, Book IV (1674) 5

William Pitt (the Younger), British House of Commons, 18 Nov. 1783...4

INTEREST OF *AMICA CURIAE*[1]

Amica Curiae **Angela Reading**, a mother and former school board member, is the victim of government censorship, like that at issue in the present case. She is the plaintiff in a pending civil rights case, *Reading v. Duff et al.*, Case No. 1:23-cv-01469-KWM-EAP (D.N.J.), and Case No. 23-3092 (3d Cir.), that involves issues directly related to those implicated here. Mrs. Reading has personally experienced government censorship of her protected speech on social media and faces the ongoing threat of future censorship. She has an interest in ensuring U.S. courts recognize and protect First Amendment rights against the growing trend of infringement by government actors who pressure social media administrators to remove clearly protected speech from the Internet because it departs from official government narratives—in Mrs. Reading's case the official narrative that eminently questionable "gender identity" propaganda is a fit subject for elementary school students.

This case involves precisely the type of censorship at issue in *Reading*: government censorship on social media of speech certain government officials characterize as dangerous "misinformation" or "disinformation." Government censorship silences myriad speakers on social media, such as Mrs. Reading, to whom others are entitled to

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[1] *Amica curiae* states that no counsel for a party authored this brief in whole or in part and that no party or counsel for a party contributed money intended to fund the preparation or submission of this brief. No person other than *amica curiae* or her counsel contributed money intended to fund the preparation or submission of this brief.

listen and respond. The primary speech at issue in the present case relates to COVID-19 and elections, while the speech at issue in *Reading* relates to parental objections to gender ideology being taught in public schools—all topics of significant and important public debate. But the injunction in the present case protects *all* "posted social-media content containing protected free speech." *Missouri v. Biden*, 83 F.4th 350, 397 (5th Cir. 2023).

As briefly summarized below, and as detailed at length in *Reading v. Duff*, military officials at a local military base, incensed by Mrs. Reading's unquestionably First Amendment-protected views, used a local police chief to obtain the removal of her Facebook post on a matter of public concern in violation of her free speech rights, causing ongoing harm to her and her family. Like the government officials in this case, the government officials in *Reading* unapologetically defend their actions as supposedly necessary for public "safety," based on the recently popularized theory, wholly contrary to First Amendment law, that speech viewed as disturbing by government officials could "inspire" someone to commit violence and therefore must be suppressed. Mrs. Reading submits this brief to relate her experience as yet another victim of recent efforts by government officials across the country to create, extra-legally, a *de facto* new category of proscribable speech: i.e., any speech the government deems "dangerous" because of its potential to arouse opposition, even vehement opposition, to government policies and positions the government deems to be unimpeachable official orthodoxy.

SUMMARY OF ARGUMENT

Amica Curiae Angela Reading submits this brief in support of the injunction and the decision of the Fifth Circuit.

Mrs. Reading became the target of coordinated efforts by government officials, including high ranking United States military officers and the chief of her local police department, to silence her speech. Why? Mrs. Reading and her children saw posters in a public school affirming as morally acceptable the terms "polysexual," "genderfluid," "bi," "LGBT Pride," "pansexual," and "genderqueer"—posters impressionable school children were induced to create, employing sexually fraught terms of which they would have had no knowledge without inculcation in "gender identity" politics by teaching staff. Mrs. Reading reasonably, in a non-threatening manner, expressed measured "concern" about this on social media, in a single Facebook post. The post "welcome[d] respectful debate" and did not identify any student or staffer, name the school, call for anyone to act, or violate Facebook community standards.

Government officials mobilized to suppress her post *and* the opinion she expressed in it. With no basis in law or fact they claimed—and continue to claim—that they needed to censor her post in the interests of public "safety" because it could somehow inspire third parties to commit acts of violence. They coerced the Facebook group administrator (a private citizen) to take down the post with the threat that she would be liable for a school shooting if it remained online and that, like Mrs. Reading, she would come under investigation by Homeland Security.

Through open-records requests, Mrs. Reading obtained definitive proof of the coordinated, unlawful efforts by government officials to censor her. She then promptly filed her lawsuit against them in the United States District Court for the District of New Jersey. That lawsuit remains pending. In the defendants' filings, they do not deny the relevant facts, offer no evidence that Mrs. Reading posed any threat to anyone, and yet continue to defend their conduct as supposedly "necessary" to protect the "safety" of the community. The defendants in *Reading v. Duff* perfectly exemplify the rapidly spreading practice of government officials at all levels to cite "public safety" or "public health" as grounds to coerce social media operators to censor speech that departs from official government narratives.

This alarming development is wholly antithetical to the First Amendment and must be decisively arrested and rejected by the courts. Our founding generation knew well and, through our Constitution, guarded against giving government such sweeping powers. *See, e.g., Ariz. v. Mayorkas*, 143 S. Ct. 1312, 1316 (2023) (statement of Gorsuch, J.) ("Decisions produced by those who indulge no criticism are rarely as good as those produced after robust and uncensored debate. Decisions announced on the fly are rarely as wise as those that come after careful deliberation. Decisions made by a few often yield unintended consequences that may be avoided when more are consulted. Autocracies have always suffered these defects. Maybe, hopefully, we have relearned these lessons too.") (internal footnotes omitted); *cf.* William Pitt (the Younger), British House of Commons, 18 Nov. 1783 ("Necessity is the

plea for every infringement of human freedom: it is the argument of tyrants; it is the creed of slaves."), *available at* https://www.oxfordreference.com/display/10.1093/acref/9780191826719.001.0001/q-oro-ed4-00008337 (last visited Feb. 8, 2024); John Milton, *Paradise Lost*, Book IV, 393-94 (1674) ("So spake the Fiend, and with necessity, / The tyrant's plea, excused his devilish deeds.").

The record here demonstrates, as in Mrs. Reading's case, that the government has abandoned its commitment to the most basic constitutional protections for free speech. The injunction in the present case was warranted to protect precisely that speech the government doesn't want the people to hear because it questions the policies and views of government officials who deem their positions "true" and contrary views by citizens as proscribable "disinformation." Indeed, in Mrs. Reading's case, the police chief who acted as the agent for the military officials demanding censorship of Mrs. Readings' Facebook post on grounds of "public safety" defends his actions as necessary to address her "moral-panic driven diatribe, demonstrating significant ignorance of gender identity issues." In Mrs. Reading's case, as here, offenses against this kind of smug official orthodoxy become grounds for government censorship of clearly protected speech deemed "dangerous."

Our Constitution does not permit government officials to operate in the shadows while shielded from public scrutiny and criticism. Therefore, the Fifth Circuit's injunction was appropriate and should not be vacated for the sake of our nation's perennial commitment to robust public debate without government interference.

ARGUMENT

I. MRS. READING'S EXPERIENCE SHOWS THE READINESS AND ABILITY OF GOVERNMENT ACTORS TO CENSOR AS WELL AS THE REAL AND LASTING HARM THAT RESULTS FROM GOVERNMENT CENSORSHIP.

The undisputed facts of Mrs. Reading's case, consistent with the facts in this case, emphasize the need for urgent judicial action to stop the government from violating the First Amendment right to free speech.

A. Federal and State Government Actors Targeted Mrs. Reading's Protected Speech.

After Mrs. Reading made her November 22 Facebook post, government officials launched a coordinated attack on her protected speech. Army Major Christopher Schilling worked with his fellow military personnel at Joint Base McGuire-Dix-Lakehurst (MDL).

For example, on November 29, 2022, Schilling sent an official military email, including to local school leadership, complaining about Mrs. Reading's speech as if it were unlawful incitement to violence: "In the current political climate and recent hate crimes across the country [*sic*] it goes without saying that it takes only one person to be move [*sic*] to violent action by her post." Schilling demanded "action each of you can take to insure [*sic*] the

continued safety of students until someone can put a stop to her actions."

On the same date, Major Nathaniel Lesher, head of the Joint Base's Security Forces, working with Schilling, "pushed" the idea of censoring Mrs. Reading's post to the local North Hanover Township Police Chief, Robert Duff. Schilling informed a group of parents and school staffers that he was "actively working with the base leadership . . . and they are working to support us in our efforts"—meaning the official censorship of Mrs. Reading's First Amendment-protected views.

The Joint Base Installation Antiterrorism Program Manager, Joseph Vazquez, referred Mrs. Reading to the New Jersey Office of Homeland Security and Preparedness as well as to the New Jersey State Police Regional Operations Intelligence Center because "[b]oth agencies['] analysts keep an eye on far right/hate groups."

Meanwhile, another Joint Base leader, Lt. Col. Megan Hall, Deputy Commander of the 87th Mission Support Group's Security Squadron, joined in the growing conspiracy to censor Mrs. Reading. Following a phone call with the Superintendent of the school district, Hall emailed local school leaders to condemn Mrs. Reading's protected speech at length, copying other military personnel. She presented the Superintendent with several posts supporting Mrs. Reading and fretted that "Ms. Angela Reading encouraged people of like mindedness to attend the monthly BOE [Board of Education] meetings and express the same view point [*sic*]"—as if encouraging people to attend a board meeting (which in fact Mrs. Reading had not done) were actionable wrongdoing warranting

intervention by public officials. The school superintendent forwarded Hall's implicit request for censorship of Mrs. Reading to the local police chief.

B. Government Officials Coerced a Private Citizen to Remove Mrs. Reading's Facebook Post.

On November 30, 2022, Police Chief Robert Duff, at the behest of the aforesaid federal military officials, coerced the removal of Mrs. Reading's Facebook post. Identifying himself as the township's Chief of Police, Duff told the Facebook group administrator (a private citizen) that local police were working in cooperation with Homeland Security, which was already investigating Mrs. Reading, and Joint Base officials concerning the baseless claim that her post could provoke a school shooting, so that the administrator should take it down. The administrator was so intimidated by Duff that she removed Mrs. Reading's post while still on the phone with him.

After Chief Duff thus coerced the group administrator to remove the post, he reported on his success by email to the Joint Base officials via their military email accounts, stating "the North Hanover Township Police takes this issue very seriously" and "I will continue to see if I can get additional posts removed from other social media posts. I will keep you advised."

Once she learned of Chief Duff's actions from the Facebook group administrator, Mrs. Reading sent him an email protesting his censorship of her speech. On December 1, 2022, he telephoned Mrs. Reading to admit that he did have the Facebook post

taken down and further revealed he was working with the Joint Base officials who had identified her as an “extremist.”

In a social media post, Schilling falsely depicted Mrs. Reading as a security threat to “many families” which the Joint Base leadership was taking “very seriously.” The Joint Base officials continued an unmerited frenzy of communications with numerous law enforcement agencies so as to “threat-tag” Mrs. Reading’s speech. On December 5, the New Jersey Office of Homeland Security and Preparedness, in response to the Joint Base’s “Installation Threat Working Group” activity concerning Mrs. Reading’s already-censored speech, advised that it would “loop in the Burlington County Prosecutor’s Office Counter-Terrorism Coordinator for situational awareness.” Joint Base leadership continued to trigger widespread law enforcement investigation and a state of alarm, including an attempt to launch a statewide Incident Detection Response (IDR) “threat-tagging” Mrs. Reading expressions of parental concern as an “incident” of potential (or even actual) criminality.

C. Mrs. Reading and Her Family Suffered Due to Government Censorship and Retaliation for Her Protected Speech.

The public furor against Mrs. Reading orchestrated by federal and state officials made untenable her elected position as Vice President of the Northern Burlington County Regional School Board. On December 7, 2022, she resigned that position. Placed in the same position as his wife by

the government's actions, Mrs. Reading's husband resigned as President of North Hanover Township's school board. On December 8, 2022, upon hearing this news, Lt. Col. Hall sent an email to the Joint Base officials, stating: "Team, Thank you. Please note we appreciate everything you do for you [*sic*] kids and families here at JB MDL." The retaliation against Mrs. Reading and her family continued, as detailed at length in her lawsuit.

The government's actions have rendered Mrs. Reading, the mother of two children, a pariah in her own community. In March 2023, she lost a job offer to work as an associate practicing education law at a respected local firm and is now virtually unemployable in her field of study.[2] She and her husband have had to withdraw their children from the public school system and enroll them in private school at great expense.

All of this harm befell Mrs. Reading because of the government's unlawful and unbridled response to a single social media post, no part of which was threatening violence to anyone and which contained speech fully protected by the First Amendment. It was thus not Mrs. Reading, but the government actors in question, who exhibited "moral panic" over a view running counter to their own and successfully contrived to drive its expression from the digital public square.

The protections of the Constitution notwithstanding, agents of the federal, state, and local government censored Mrs. Reading and

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[2] At the time of her Facebook post, Mrs. Reading was in her third year of study at Villanova University Law School and preparing to work in education law, as she has previously spent many years as an educator.

radically altered her life forever. Her case, like this one, demonstrates that government—especially, the federal government—needs to be emphatically reacquainted with the safeguards for free speech enshrined in our law. Only the federal judiciary is capable of providing that lesson. The Fifth Circuit's injunction is an urgently needed first step in rolling back government's alarming encroachments on First Amendment liberty over the past few years.

II. THE INJUNCTION PROPERLY PROTECTS POLITICAL DISCOURSE.

A. The Injunction Appropriately Protects Free Speech.

The protection of public discourse on important social and political issues is at the core of the First Amendment. *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2318, 216 L. Ed. 2d 1131 (2023). Mrs. Reading, along with Respondents here and many others, is in the crosshairs of the government's ongoing efforts to suppress officially disfavored public discourse on important issues of community interest. "[M]illions of protected free speech postings have been suppressed by the government." *Missouri v. Biden*, 83 F.4th at 392 (quoting the District Court's order, *Missouri v. Biden*, No. 3:22-CV-01213, 2023 WL 4335270, at *44 (W.D. La. July 4, 2023)). "[H]undreds of thousands or millions of citizens who are potential audience members [were] affected by federal social-media speech suppression." *Missouri v. Biden*, 2023 WL 4335270, at *65.

Mrs. Reading's Facebook post is but one notable example of the millions of protected speech

postings federal actors have recently suppressed with their increasingly cavalier approach to free speech. The government's censorship of Mrs. Reading affected an untold number of potential audience members who were denied the ability to see and consider her point of view. Mrs. Reading herself is a potential audience member affected by suppression of *others'* social media posts, including those at issue here. The government suppressed her right to voice her opinion, suppressed the rights of others to hear that opinion, and suppressed her right to hear the opinions of others. *See*, *e.g.*, *Hill v. Colorado*, 530 U.S. 703, 728 (2000) ("[T]he First Amendment protects the right of every citizen to reach the minds of willing listeners and to do so there must be opportunity to win their attention.") (cleaned up). As in this case, the government officials in *Reading v. Duff* continue to defend their unlawful censorship, insist that it was necessary and appropriate in the interests of safety, and have given no indication they intend to cease it.

Receiving information about one's government, especially criticism of official government narratives, is what distinguishes a healthy civic society from a police state. *See, e.g., Connick v. Myers*, 461 U.S. 138, 156 (1983) (Brennan, J., dissenting) ("It is hornbook law . . . that speech about 'the manner in which government is operated or should be operated' is an essential part of the communications necessary for self-governance the protection of which was a central purpose of the First Amendment.") (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)). The Constitution therefore prevents the government from interfering with "the right to receive

information and ideas." *Stanley v. Georgia*, 394 U.S. 557, 564 (1969); *see, e.g., Martin v. Struthers*, 319 U.S. 141, 143 (1943).

"The dissemination of ideas can accomplish nothing if otherwise willing addressees are not free to receive and consider them. It would be a barren marketplace of ideas that had only sellers and no buyer." *Lamont v. Postmaster General*, 381 U.S. 301, 308 (1965) (Brennan, J., concurring) (citations omitted). And, "[a] fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017). "[W]here a speaker exists . . . the protection afforded is to the communication, to its source and to its recipients both." *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 756 (1976). "This right to listen is 'reciprocal' to the State Plaintiffs' right to speak and constitutes an independent basis for the State Plaintiffs' standing here." *Missouri*, 83 F.4th at 372 (quoting *Va. State Bd. of Pharm.*, 425 U.S. at 757).

The injunction in this case appropriately protects the right to engage in free public discourse against what had become an out-of-control government censorship complex—the same sort of complex, on a smaller scale, to which Mrs. Reading was subjected.

The decision by this Court should restore the proper operation of the marketplace of ideas at all levels of government.

B. Injunctive Relief is Needed Because the Government Has Disregarded the Most Basic Protections of the First Amendment.

Despite the manner in which the government has treated the Respondents and Mrs. Reading, "it is our law and our tradition that more speech, not less, is the governing rule." *Citizens United v. FEC*, 558 U.S. 310, 361 (2009); *see* U.S. Const. amend. I (prohibiting the government from making laws "abridging the freedom of speech"). The constitutional protection of free speech is not merely intended to encourage self-expression. "Free speech… is essential to our democratic form of government... and it furthers the search for truth." *Janus v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31*, 138 S. Ct. 2448, 2464 (2018). "Whenever the Federal Government or a State prevents individuals from saying what they think on important matters or compels them to voice ideas with which they disagree, it undermines these ends." *Id.*

Our Founders were confident in their belief "that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth[.]" *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring). The Constitution accordingly seeks to "maintain a free marketplace of ideas, a marketplace that provides access to 'social, political, esthetic, moral, and other ideas and experiences.'" *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 583 (2011) (quoting *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367,

390, (1969) and citing *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting)).

A crucial corollary to the constitutionally-mandated open marketplace of ideas is that even *allegedly* false political statements—so-called "misinformation" or "disinformation" in modern parlance—are protected. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 279 n.19 (1964) ("Even a false statement may be deemed to make a valuable contribution to public debate, since it brings about the clearer perception and livelier impression of truth, produced by its collision with error.") (cleaned up). And as to falsity, government is not the arbiter of truth empowered to suppress whatever speech it deems false. *Id.* at 271.

Yet another crucial corollary to the rule of law mandating the marketplace of ideas is that it is precisely speech labelled "offensive," "inflammatory," or some other legally inconsequential pejorative that deserves First Amendment protection. Justice Alito recently explained in his concurring opinion in *Mahanoy Area School District v. B.L.*, "[I]t is a 'bedrock principle' that speech may not be suppressed simply because it expresses ideas that are 'offensive or disagreeable.'" 141 S. Ct. 2038, 2055 (2021) (Alito, J., concurring) (citations omitted). "[C]onstitutional rights may not be denied simply because of hostility to their assertion or exercise." *Watson v. Memphis*, 373 U.S. 526, 535 (1963); *Cox v. Louisiana*, 379 U.S. 536, 551 (1965).

In sum, the Constitution forbids government from treating politically engaged citizens like domestic enemies. While speech that is directed to inciting imminent lawless action and is likely to

produce it enjoys no First Amendment protection,[3] the rule of law is violated by government censorship of speech that is constitutionally protected, however disfavored it may be in the minds of government officials who appoint themselves judges of "misinformation" and "disinformation."

Tellingly, the government here conflates constitutionally unprotected, unlawful activity like recruiting terrorists or harming children with protected speech it characterizes as "spread[ing] misinformation and disinformation." *See* Gov't Applic. at 6 (social media "carries significant hazards, including the use of social media platforms to recruit terrorists, harm children, and spread misinformation and disinformation."). The government thus defends as righteous precisely the growing regime of impermissible official censorship of protected speech the government decides people must not publish or read. That regime has been dealt an important blow in this case—and it was long overdue.

C. Speech Deemed "Controversial" is Entitled to the Same, if Not Greater, Constitutional Protections as Conventional Speech.

Anodyne speech does not need the Constitution to protect it. It is precisely controversial speech that must be shielded from government by the impenetrable armor of First Amendment protection. "The right to speak freely and to promote diversity of ideas and programs . . .

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[3] *See Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949); *see also Snyder v. Phelps*, 562 U.S. 443, 460-61 (2011) ("As a Nation we have chosen . . . to protect even hurtful speech on public issues to ensure that we do not stifle public debate."); *Texas v. Johnson*, 491 U.S. 397, 408-09 (1989) ("[A] principal function of free speech under our system of government is to invite dispute.") (internal quotation marks and citations omitted).

Speaking on matters of public concern, as Mrs. Reading and the millions of individuals whose speech is at issue here have done, can never be treated as a threat to "public safety." It is, rather, the first line of defense against tyranny, as our nation's history demonstrates. *See, e.g., Citizens United*, 558 U.S. at 339 ("The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it."). Undoubtedly, the public has an interest in knowing how its officials are discharging their duties. "The right of free public discussion of the stewardship of public officials . . . [is] a fundamental principle of the American form of government." *New York Times*, 376 U.S. at 275; *see Schacht v. United States*, 398 U.S. 58, 63 (1970) (commenting that all persons "in our country, enjoy . . . a constitutional right to freedom of speech, including the right openly to criticize the Government"); *see also Ariz. Free Enterprise Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 754 (2011) ("'[T]here is practically universal agreement that a major purpose of the

First Amendment 'was to protect the free discussion of governmental affairs[.]'") (quoting *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)).

In recent years government officials have been abusing their authority on a scale never before seen, undermining our nation's bedrock commitment to freedom of speech. For too long they have been able to hide from the light of public scrutiny demanded by the First Amendment as they silence critics of their policies and actions. Government officials may desire freedom from all criticism, but the First Amendment does not permit them to seek that illicit luxury. The injunction restores the protection of the First Amendment to its rightful place in American life. For the sake of our hard-won heritage of freedom, it must be affirmed.

CONCLUSION

The suppression of *amica* Angela Reading's speech parallels the suppression of speech engaged in by Petitioners here. Reversing the injunction would give the green light to governments that they may coerce, intimidate, and ultimately silence speech they dislike, the First Amendment notwithstanding.

Instead, this Court should affirm the decision of the Fifth Circuit to issue a preliminary injunction.

Respectfully submitted, this 9th day of February, 2024.

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