No. 24-50879

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RICHARD LOWERY,

Plaintiff-Appellant,

v.

LILLIAN MILLS, in her official capacity as Dean of the McCombs School of Business at the University of Texas at Austin; ETHAN BURRIS, in his official capacity as Senior Associate Dean for Academic Affairs of the McCombs School of Business at the University of Texas-Austin; CLEMENS SIALM, in his official capacity as Finance Department Chair for the McCombs School of Business at the University of Texas-Austin; JAMES E. DAVIS, in his official capacity as Interim President of the University of Texas at Austin,

Defendants-Appellees.

On Appeal from the United States District Court for the Western District of Texas, Austin Division

DEFENDANTS-APPELLEES' RESPONSE TO PETITION FOR REHEARING EN BANC

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The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

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[1] The Court's caption reflects James E. Davis as "Interim President." On August 20, 2025, Mr. Davis was named President of the University of Texas-Austin.

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INTRODUCTION

En banc review is unwarranted. The unanimous panel decision correctly applies Circuit and U.S. Supreme Court precedent and raises no conflicts warranting review. Fed. R. App. P. 40(b)(2)(A)–(C). Lowery identifies no Fifth Circuit decision that conflicts with the panel's ruling, and neither *Burlington Northern* nor any other Supreme Court opinion conflicts with this Court's First Amendment retaliation standard for adverse employment actions. Lowery claims a split over how circuits frame the adverse-action inquiry, but reading the cases reveals no material conflict. The various framings yield similar results, and Lowery identifies *no* case in which the differently-framed standards yield a distinct outcome on any given facts. Nor does Lowery raise any question of "exceptional importance," Fed. R. App. P. 40(b)(2)(D), especially where this Court's rationale for its adverse-action inquiry is longstanding, well-reasoned, and in line with Supreme Court precedent.

In short, Lowery's claims cannot survive under any existing standard for assessing the employment actions allegedly taken against him, highlighting at least that the sole issue he presents is immaterial here. Lowery attempted to manufacture a First Amendment retaliation

claim by "self-chilling," based on indirect comments allegedly made *to a third party* about a secondary academic post—and despite that he was reappointed to that post weeks later, on the expected timeline, and received annual pay raises in his tenured faculty position. Even after the threat he allegedly perceived was disavowed, Lowery chose to continue chilling his speech. Lowery's claims fail under *Burlington Northern*'s standard for Title VII cases just as surely as they do under this Court's First Amendment retaliation precedent.

Lowery's push to lower the standard for viable First Amendment retaliation claims in the public-employment context ignores key state interests. Public employees enjoy free-speech rights, but employers also need to be able to engage with employees to manage their institutions. If First Amendment retaliation claims are available for the allegations here—*indirect*, *attempted* counseling and perceived-*yet-disavowed*-oral-threats—that will frustrate the operation of state agencies, especially universities. Litigation will become a recurring tool for waging college-campus disagreements, and federal courts will be overburdened with micromanaging an endless litany of disputes between faculty and administrators. The Court should deny Lowery's petition.

BACKGROUND

1. Lowery is a tenured professor at UT-Austin. ROA.2709. He is also a director at UT-Austin's Salem Center, appointed annually since 2020-21. ROA.2820-2827. In 2022, Lowery made numerous public statements harshly criticizing UT-Austin policies, UT-Austin officials, and his own colleagues. ROA.2711-19. Lowery alleges he began chilling his speech in August 2022 by setting his Twitter/X account to "private" and speaking only at closed events. ROA.2730-31.

According to Lowery, he self-chilled primarily due to university officials asking the Salem Center's then-Executive Director, Carlos Carvalho, to counsel Lowery to: "tone it down" with his speech, stop telling donors not to give money to the university, "work" on speech that was "disruptive to [university] operations," and try "civility." ROA.2722-24. Lowery does not allege those Defendants communicated these criticisms directly to him. Carvalho refused to counsel Lowery about his speech. ROA.125-27. Lowery allegedly based his decision to self-chill primarily on fears of not being reappointed to the Salem Center, with its $20,000 stipend, and losing a research position. ROA.2729. He did not allege any fear of losing his tenured faculty position. *See* ROA.2707-40.

Defendants reappointed Lowery to his Salem Center position for 2022-23 just weeks after the July/August 2022 Carvalho meetings, as his pleadings admit, ROA.36, 2724, 2825—on the standard timeline, *compare* ROA.2825 (September 19, 2022 reappointment) *with* ROA.2823 (September 20, 2021 reappointment). And evidence showed Defendants raised his 2022 pay for his tenured position, again on the usual timeline. ROA.2853 (2022 pay raise year-to-the-day as 2021). The complaints and evidence also showed Defendants disavowed any threat, including: Carvalho's declaration, ROA.36, 126; contemporaneous meeting notes, ROA.3016, 3018; and declarations and depositions, ROA.2858-59, 2860, 2866-68, 2871, 2878; *see also* ROA.249. While the case was pending, Defendants again reappointed Lowery to his Salem Center position and raised his faculty salary for 2023-24. ROA.2827, 2855.

2. Lowery sued, originally advancing two claims: "chilling of free speech," and First Amendment retaliation. ROA.23-44. After Defendants moved to dismiss for lack of standing and failure to state a claim, ROA.670-87, the district court dismissed the retaliation claim on 12(b)(6) grounds but left the chilled-speech claim. ROA.1307-38. After discovery, Lowery added an "unwritten speech code" claim. ROA.2735-38.

Defendants moved to dismiss both remaining claims, ROA.2745-59, and for summary judgment on the chilled-speech claim, ROA.2798-814. The district court granted all that relief. ROA.3136-70.

The panel affirmed, "abjur[ing] the opportunity to become the Federal Faculty Lounge Police." Op.25. It found Lowery met the "not hard to sustain" standard for standing, Op.12 (internal quotations omitted), but upheld dismissal of his claims, Op.12-25. That included affirming on the retaliation claim under *Breaux v. City of Garland*, 205 F.3d 150 (5th Cir. 2000), and rejecting Lowery's argument that a Title VII case, *Burlington Northern & Santa Fe Railway Company v. White*, 548 U.S. 53 (2006), overruled *Breaux* and displaced the Circuit's First Amendment precedent. Op.15-19.

ARGUMENT

Lowery cannot demonstrate that en banc review is warranted based on a conflict with precedential authority or an exceptionally important question. Fed. R. App. P. 40(b)(2). He relies solely on the panel's refusal to jettison decades of Circuit precedent on the adverse-action inquiry for First Amendment retaliation claims, in favor of a Title VII retaliation standard. But Lowery's claims fail even under the Title VII standard,

making the question presented irrelevant to the outcome here and not reflective of a meaningful split of authority or important issue. Lowery is wrong that the panel decision conflicts with Circuit precedent, with *Burlington Northern*, or with other circuits' decisions. And if the Court were to reconsider the appropriate adverse-action standard for First Amendment retaliation cases, compelling reasons favor retaining longstanding Circuit precedent. The panel correctly rejected Lowery's claims, which, if accepted, would vastly increase the First Amendment retaliation litigation docket and severely complicate the operation of public universities and other governmental entities.

I. The unanimous panel decision implicates no material split of authority and raises no exceptionally important question.

A. Lowery's claims fail under any standard, rendering the issue presented immaterial here and underscoring its lack of importance.

No matter the standard, Lowery's First Amendment claims cannot succeed. That indicates the standards are not materially different and no genuine conflict exists. *See also infra* Part I.B. It also makes this a decidedly poor case on which to expend limited en banc resources.

First, Lowery's claims flunk even the *Burlington Northern* standard. That test is whether an *objectively reasonable* employee would

have found the challenged actions *materially* adverse. 548 U.S. at 68. Yet Lowery alleges *indirect* attempts at counseling about more effective ways to speak on campus issues—*i.e.*, statements made to a third party in meetings he didn't attend—and supposed criticisms, all of which he claims as perceived threats about a secondary academic position *to which he was promptly reappointed as expected*. The counseling attempts went no further; Defendants subsequently disavowed any perceived threat and gave Lowery reappointments and pay raises; and no threat was ever alleged as to his tenured position. *See supra* pp. 3-4. No *objectively reasonable* person could view these events as *material* adverse action, so Lowery's claims fail even under this standard. Lowery can prevail only by inventing a standard that counts threats of *any* nature as actionable, which no court has adopted—for good reason.[2]

[2] Lowery also improperly rips out of context the panel's statement that his self-chilling was sufficiently reasonable *for standing purposes*, Op.12, to suggest the panel said he would prevail *on the merits* under *Burlington Northern*. Pet.2-3. The panel didn't say that. It cited authority on the low threshold for standing—"not hard to sustain." Op.12. Neither the opinion nor the law supports conflating these inquiries or watering-down *Burlington Northern* so far that anyone with standing has a viable First Amendment (or Title VII) claim.

This Circuit's Title VII precedent, and Lowery's out-of-circuit cases, confirm this. For instance, this Court held in a Title VII case applying *Burlington Northern* that a reasonable employee would be dissuaded by a threat only if they had "confirmation [that] the threat was official" and heard directly from someone "who had the last word on final tangible employment decisions." *Brandon v. Sage Corp.*, 808 F.3d 266, 271 (5th Cir. 2015). Here, Lowery did not allege any official or direct threat; instead, Carvalho, who oversaw Lowery's Salem Center position, refused to counsel Lowery in any way.[3] ROA.35, 2722-23.

Lowery also loses under his claimed "*Burlington Northern*" cases. For example, in *Dodge v. Evergreen School District*, the Ninth Circuit explained that a supervisor's telling an employee "that he needed to use 'better judgment'" was not an adverse action, nor were insults like "racist," "bigot," "homophobe," or "liar." 56 F.4th 767, 779 (9th Cir. 2022). Only the direct "threat against [plaintiff's] employment"—directly telling the employee he would *need* his union representative, a prerequisite to

[3] Demonstrating the similarity of the standards, this Court has approvingly cited *Breaux* in Title VII cases about adverse actions. *See, e.g.*, *Baig v. McDonald*, 749 F. App'x 238, 241 (5th Cir. 2018).

firing him—constituted an adverse action under the Ninth Circuit's *Burlington Northern*-esque test. *See id.* at 779-80.

Lowery's Sixth Circuit case applying a *Burlington Northern* standard noted that actionable "[t]hreats of retaliation in the case law have been clear," and held that "telling [plaintiff] not to attend political functions and how to vote[] involve[d] no retaliation or threat of retaliation." *Kubala v. Smith*, 984 F.3d 1132, 1140 (6th Cir. 2021). "What Kubala assert[ed] is too ambiguous." *Id.* That's true for Lowery.

Lowery cites Eleventh Circuit law, but *Bell v. Sheriff of Broward County*, 6 F.4th 1374, 1377-78 (11th Cir. 2021), *harmonized* the *Burlington Northern*-like and *Breaux*-like standards, stating that "both ask whether the challenged conduct would, objectively, chill or deter the exercise of constitutionally protected speech." *Id.* at 1379; *see id.* at 1378 (comparing *Stavropoulos v. Firestone*, 361 F.3d 610, 620 (11th Cir. 2004), with version of *Breaux*). *Bell* held that even a paid suspension pending an investigation did not qualify. *Id.* at 1379. Lowery, far from being suspended or investigated, has repeatedly been reappointed to his Salem Center position and been given raises in his faculty role.

Lowery loses under the standards applied in his cited cases. This renders further review advisory and immaterial, and it undercuts the supposed need to resolve an alleged circuit split (*see also infra* Part I.B).

Second, regardless of the adverse-action standard, Lowery's claims fail for lack of standing. The panel looked only at Lowery's *allegations* in concluding he met the low standing threshold. Op.12. But the case partly proceeded to summary judgment, so his standing burden increased. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). And because he seeks prospective relief, he must show a credible, "substantial risk of *future* injury that is traceable to the…defendants and likely to be redressed." *Murthy v. Missouri*, 603 U.S. 43, 69 (2024) (emphasis added). But Defendants repeatedly disavowed any threats, both in words and by reappointing him to the Salem Center position and giving him annual raises. *See supra* pp. 3-4. Lowery has "no more than conjecture"—and poor conjecture at that, given these actions—for the notion that he is "likely to face a risk of future censorship traceable to the defendants." *Murthy*, 603 U.S. at 72-73. This is another reason to deny en banc review.

B. The panel correctly followed circuit precedent, which *Burlington Northern* did not overrule and which does not materially conflict with any other precedent.

Lowery's claim that the panel decision conflicts with precedential authority does not withstand scrutiny.

First, Lowery is flat wrong that *Burlington Northern* overruled this Court's First Amendment retaliation law, much less "unequivocally" so. *See Gahagan v. USCIS*, 911 F.3d 298, 302 (5th Cir. 2018). As the panel explained (Op.16-17 & n.2), *Burlington Northern* focused solely on Title VII and did not purport to change First Amendment law. 548 U.S. at 62-63. The Supreme Court has never indicated its adverse-action standard for Title VII retaliation controls First Amendment retaliation claims; indeed, it recently addressed such claims without even mentioning *Burlington Northern*. *See Hous. Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 477 (2022); *Nieves v. Bartlett*, 587 U.S. 391, 399 (2019); Op.17. *Houston Community College* also demonstrated (at 477) the Supreme Court's continued reliance on *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 75 (1990), which undergirds this Court's adverse-action precedent, *see Pierce v. TDCJ*, 37 F.3d 1146, 1149-50 & n.1 (5th Cir. 1994). And there's

good reason why Title VII retaliation law should not dictate First Amendment retaliation standards. *See infra* Part I.C.

Second, Lowery is incorrect that the panel departed from intra-Circuit authority. He cites Circuit cases that queried whether *Burlington Northern* overruled *Breaux*, Pet.8-10, but those cases declined to apply *Burlington Northern*—confirming that the panel's decision creates no Circuit conflict. *See* Op.15-17. And *Garrett v. Judson ISD* involved more than a "campaign of unfounded charges of incompetence," *contra* Pet.10; instead, the school declined to renew the plaintiff's teaching contract. 299 F. App'x 337, 339, 346 (5th Cir. 2008).

Third, Lowery also is wrong that there is a real or meaningful circuit split over the adverse-action standard for First Amendment retaliation claims. Half of the cases Lowery string-cites for a supposed conflict do not even cite *Burlington Northern*. *See* Pet.7 (*Alston*, *Barton*, *McKee*, *Matrisciano*, *Dodge*, *Tao*). And the claimed split is illusory in practice: even when courts use different words for the standard, similar results obtain. Lowery has not identified a single case where the outcome would have changed under a different standard.

Reading the cases reveals that this Circuit takes a *categorical* approach to arrive at the same results other circuits achieve using a *functional* approach—*i.e.*, this Court excludes as not sufficiently adverse the same kinds of employment actions that other circuits exclude on the basis that they wouldn't deter a reasonable person from exercising First Amendment rights. *See, e.g.*, *Alston v. Spiegel*, 988 F.3d 564, 575 (1st Cir. 2021) ("fanciful" to think sending a letter and making comments to plaintiff's supporters was adverse action); *Barton v. Clancy*, 632 F.3d 9, 30 (1st Cir. 2011) (mayor's criticisms not chilling); *McKee v. Hart*, 436 F.3d 165, 170 (3d Cir. 2006) ("allegedly retaliatory comments were trivial" despite being "criticism" and "reprimands"); *Delgado-O'Neil v. City of Minneapolis*, 745 F. Supp. 2d 894, 903 (D. Minn. 2010) (plaintiff was "verbally reprimanded" and given "coaching sessions"), *aff'd*, 435 Fed. App'x 582, 584 (8th Cir. 2011); *Couch v. Bd. of Trs. of the Mem. Hosp.*, 587 F.3d 1223, 1243 (10th Cir. 2009) (investigations and non-reappointment to committee insufficient); *Bell*, 6 F.4th at 1378 (plaintiff "loses under both…standards").

Similarly, *Breaux* recognizes demotions as sufficiently adverse, as do other circuits applying a functional standard. *See Specht v. City of*

New York, 15 F.4th 594, 604 (2d Cir. 2021) (officer's removal from role and placement on modified duty is adverse reassignment); *Matrisciano v. Randle*, 569 F.3d 723, 730 n.2 (7th Cir. 2009) (demotion to less desirable position sufficiently adverse). And *Breaux*, citing *Pierce*, also recognizes as sufficiently adverse refusals to promote, 205 F.3d at 157, like the extra hurdles to promotion disparately required in *Tao v. Freeh*, 27 F.3d 635, 639 (D.C. Cir. 1994); *see also id.* at 639, 641 n.6 (only one passing mention of chilled speech and *declining* to adopt Title VII standard for First Amendment retaliation context). What ultimately counts as adverse action does not vary under the standards.

Lowery's string-cited split claim is inflated not only substantively, but numerically. For example, *Matrisciano* and *Barton* were decided on qualified-immunity grounds. 569 F.3d at 730; 632 F.3d at 30. *Feminist Majority Foundation v. Hurley* adds nothing because it does not implicate First Amendment retaliation, referring to *Burlington Northern*'s standard only in footnoted dicta. 911 F.3d 674, 697 n.12 (4th Cir. 2018). It also involved claims by students (not employees), a significant distinction that Lowery overlooks in citing cases involving non-employee plaintiffs to allege a split on adverse *employment* actions. *See Bloch v.*

Ribar, 156 F.3d 673, 680 (6th Cir. 1998) ("long-recognized" that First Amendment standards differ for public employees and public-at-large); *Keenan v. Tejeda*, 290 F.3d 252, 258 (5th Cir. 2002) (same); *see also Benison v. Ross*, 765 F.3d 649, 657-59 (6th Cir. 2014) (another Lowery-cited case; one retaliation claim found actionable was brought by non-employee-plaintiff (student)).[4] Lowery cannot explain how the *Breaux* standard would yield a different result in any of these cases.

Lowery offers more than superficial citations for only two cases: a few sentences on *Dodge* and a parenthetical on *Kubala*. But as explained above, Lowery loses under the standards in those cases. In *Kubala*, the threat was deemed "too ambiguous," whereas actionable "[t]hreats of retaliation in the case law have been clear." 984 F.3d at 1140. Lowery does not explain how a case resolved the same as here helps him or demonstrates a split. *Dodge* likewise supports the panel's decision, making clear it took a direct threat of termination—not merely critical

[4] *Benison* also involved an employee-plaintiff (university professor), but she suffered an adverse employment action because her employer filed "a lawsuit [against her seeking] more than $50,000," and not merely by virtue of an intermediate recommendation against a pay supplement. 765 F.3d at 657-60.

labels (even strong ones like "racist" and "homophobe")—to be sufficiently adverse. 56 F.4th at 779-80. Even the discharge "threat" in *Breaux* was circumspect, *see* 205 F.3d at 154 (offer to avoid discharge if plaintiffs accepted suspension and recanted allegations that polygraph and investigations had shown the employees had lied), leaving open the possibility that the direct termination threat in *Dodge* could qualify in this Circuit. Regardless, the actions alleged here more closely resemble the directive in *Dodge* to use "better judgment," which was *not* actionable. 56 F.4th at 779.

On close examination, Lowery's claimed circuit split is illusory. The similarities in outcomes among the circuits' First Amendment retaliation cases are far more significant and striking than the differences in their articulation of the standard.

C. There is no reason to deviate from circuit precedent and no exceptionally important question raised.

This Circuit's existing First Amendment retaliation standard is correct and, if reexamined, should be maintained. Lowery is wrong to cast overruling *Breaux* as "a matter of exceptional importance."

First, existing Fifth Circuit precedent tracks the Supreme Court's relevant authorities. As this Court has noted, its adverse-action test

encompassing actions short of discharge pre-dated, is consistent with, and rests on the Supreme Court's *Rutan* decision on the scope of harm actionable under the First Amendment. *Pierce*, 37 F.3d at 1149-50 & n.1; *see Rutan*, 497 U.S. at 75. And the Supreme Court approvingly cited *Rutan*—not *Burlington Northern*—three years ago for its adverse-action standard covering less than discharge for First Amendment retaliation cases. *Hous. Cmty. Coll. Sys.*, 595 U.S. at 477. Lowery's suggestion that the Supreme Court silently overruled *Rutan* and this Court's precedent in 2006 *in a Title VII case* is both facially implausible and belied by the Supreme Court's continued reliance on *Rutan*. Continuing to follow this Court's First Amendment retaliation precedent is most consistent with controlling law—and amply protects First Amendment rights, as precedents applying *Breaux* demonstrate. *See, e.g.*, *Burnside v. Kaelin*, 773 F.3d 624, 627-28 (5th Cir. 2014); *Mooney v. Lafayette Cnty. Sch. Dist.*, 538 F. App'x 447, 453 (5th Cir. 2013).

Lowery also ignores that existing Circuit precedent balances significant competing concerns. Public employees like Lowery have important speech rights, but so do other employees affected by his public attacks on university programs. And public employers like Defendants

must be able to run their agencies effectively, including the need to counsel employees about the ramifications of their speech without giving rise to litigation over misperceptions of threat. The Court's existing standard for employment-based First Amendment retaliation claims accommodates these legitimate interests—as it should. *See, e.g.*, *Lane v. Franks*, 573 U.S. 228, 231 (2014).

If indirect counseling attempts and mere criticism are now actionable in federal court for any employee who claims a perceived threat, that will incentivize more litigation and discovery. It will severely complicate running public entities, especially universities. And it will throw the courthouse doors open to all manner of college-campus disagreements, overburdening federal courts and forcing them into micromanaging universities and other public employers. This Court's precedent has long warned against such dangers. *See, e.g.*, *Dorsett v. Bd. of Trs. for State Colls. & Univs.*, 940 F.2d 121, 124 (5th Cir. 1991) (noting that federal courts lack "the resources to undertake to micromanage the administration of…state educational institutions"). The panel rightly refused to become "the Federal Faculty Lounge Police." Op. 25.

Second, even if *Burlington Northern* imposed a lower standard than *Breaux—but see supra* Parts I.A–B—Lowery is wrong to say there is "no good reason" for a higher threshold for First Amendment claims. Pet.11-13. Tellingly, he offers little beyond observing the First Amendment is constitutional and Title VII is statutory. Yet there are major distinctions between the contexts that Lowery ignores. In passing Title VII, Congress imposed a primary discrimination ban, then reinforced it with a secondary ban on retaliating against persons who claim discrimination. 42 U.S.C. §§ 2000e-2(a), -3(a). Congress passed broad retaliation protection to ensure enforcement of its core anti-discrimination ban, and *Burlington Northern* merely construed that broad provision. 548 U.S. at 59, 62-64. In contrast, First Amendment retaliation claims are primary claims, with constitutional thresholds, meant to stop government from doing indirectly what it "could not command directly." *Colson v. Grohman*, 174 F.3d 498, 510 (5th Cir. 1999).

These differences support a higher threshold for First Amendment retaliation claimants. For one, such claims typically involve legitimate interests on both sides, *see supra* pp. 17-18, whereas an employer accused of violating Title VII has no legitimate interest in discriminating.

Competing legitimate interests are thus present only in the former context, warranting a higher threshold. The higher volume of potential First Amendment claims—which protects all citizens and many kinds of speech, versus Title VII that covers only a subset of speech and smaller class of potential plaintiffs (employees)—also justifies a higher threshold, to avoid overburdening courts. And importantly, if Title VII's retaliation protection is broader, that was a policy decision by Congress, which can always reconsider it. But courts write in more permanent ink for the constitutional protection, requiring greater judicial discretion to balance concerns and avoid over-constitutionalizing. *See, e.g.*, *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 456 (2015).

In sum, Lowery identifies no exceptionally important question warranting en banc review.

II. The unanimous panel decision is correct.

Lowery cannot show a sufficiently adverse action under this Circuit's precedent. Nor can he demonstrate that the alleged actions here, supposed attempts at counseling and perceived-yet-disavowed indirect threats about a secondary position, could give rise to a *materially* adverse action for an *objectively reasonable* person in his position. *See*

supra Part I.A. And as the panel recognized, crediting Lowery's claims would have sweeping effects beyond this case, undermining the ability to operate public institutions (especially universities) and enmeshing federal courts in a morass of campus conflicts and grievances. The panel wisely rejected that result.

CONCLUSION

The Court should deny Lowery's petition for rehearing en banc.

December 11, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that this document was filed with the Court via the Court's CM/ECF system on December 11, 2025, and that an electronic copy of it was served on counsel of record, as listed below, via the Court's CM/ECF system on the same date:

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CERTIFICATE OF COMPLIANCE

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