

No. 24-1279

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

BRIAN HUSSEY,
PLAINTIFF-APPELLANT,

v.

CITY OF CAMBRIDGE; CHRISTINE ELOW, in her official capacity as
Commissioner of the Cambridge Police Department,
DEFENDANTS-APPELLEES.

ON REHEARING EN BANC

**ASSENTED-TO MOTION OF PROPOSED AMICI CURIAE AMERICAN
CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION OF
MAINE, AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS,
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE,
AMERICAN CIVIL LIBERTIES UNION OF PUERTO RICO, AND
AMERICAN CIVIL LIBERTIES UNION OF RHODE ISLAND, FOR
LEAVE TO FILE EN BANC *AMICI CURIAE* BRIEF IN SUPPORT OF
NEITHER PARTY (SUPPORTING VACATUR AND REMAND)**

The American Civil Liberties Union, American Civil Liberties Union of
Maine, American Civil Liberties Union of Massachusetts, American Civil Liberties
Union of New Hampshire, American Civil Liberties Union of Puerto Rico, and
American Civil Liberties Union of Rhode Island (“Proposed *Amici Curiae*”),
respectfully move under Federal Rule of Appellate Procedure 29(b)(2) for leave to
file an *amici curiae* brief. As grounds, Proposed *Amici Curiae* state:

1. On January 28, 2026, this Court granted rehearing of the instant case *en banc* and stated that amici are welcome to file *amicus* briefs in this matter, provided that they seek prior leave of court. The Court further stated that *amicus* briefs are to be submitted no later than 7 days after the principal supplemental briefs are filed. The supplemental briefs were filed on February 18, 2026.

2. The American Civil Liberties Union (“ACLU”) is a nationwide, nonprofit organization that since 1920 has sought to protect the civil liberties of all Americans. The American Civil Liberties Unions of Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island are state and territorial affiliates of the ACLU. Proposed *Amici Curiae* have frequently appeared as both counsel and *amici* in cases concerning the First Amendment. *See, e.g., Nat’l Rifle Ass’n of Am. v. Vullo*, 602 U.S. 175 (2024) (ACLU as counsel); *Project Veritas Action Fund v. Rollins*, 982 F.3d 813 (1st Cir. 2020) (ACLU of Massachusetts as counsel).

3. The proposed brief highlights arguments and perspectives distinct from those represented by the parties. Proposed *Amici Curiae* intend to argue that public-employee speech should not receive less First Amendment weight in the *Pickering* balance because the Court deems the speech mocking, derisive, or derogatory; instead, courts should consider the inflammatory nature of the employee’s speech only as part of the factual inquiry into the employer’s interest in preventing

workplace disruption. *Amici* respectfully submit that vacatur and remand is warranted here so that the district court can apply the correct standard.

4. All parties assent to this motion.

Wherefore, Proposed *Amici Curiae* respectfully request leave to file an *amici curiae* brief.

Date: February 25, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because, excluding parts of the motion exempted by Fed. R. App. P. 32(f), this document contains 342 words. This motion complies with the typeface and typestyle requirements of Fed. R. App. P. 27(d)(1)(E) because this document has been prepared in a proportionally spaced typeface using Microsoft Word with Times New Roman font in 14-point type.

Dated: February 25, 2026

/s/ Brian Hauss
Brian Hauss

CERTIFICATE OF SERVICE

I certify that on February 25, 2026, this motion was filed electronically through the Court's CM/ECF system. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system.

Dated: February 25, 2026

/s/ Brian Hauss
Brian Hauss