No. 23-274

In the Supreme Court of the United States

WILLIAM FELKNER,
Petitioner,

v.

JOHN NAZARIAN, ET AL.,
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Rhode Island

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether this Court should overrule decades of precedent holding that, under the doctrine of qualified immunity, government officials are not subject to damages suits under 42 U.S.C. § 1983 unless their conduct violated clearly established law.

2. Whether the Rhode Island Supreme Court correctly concluded that respondents are entitled to qualified immunity on the particular facts of this case.

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INTRODUCTION

Petitioner William Felkner filed this lawsuit against respondents, members of the faculty at the Rhode Island College School of Social Work, more than 15 years ago. Seeking damages under 42 U.S.C. § 1983, Felkner claimed that respondents violated his First Amendment right to free speech by giving him "poor grades" for turning in "Master's-level assignments on topics he chose, as opposed to the topics that were assigned to him." Pet. App. 21a. The Rhode Island Supreme Court unanimously concluded that respondents are entitled to qualified immunity because, on the facts here, their conduct did not violate clearly established First Amendment law. The court reached that conclusion by faithfully applying this Court's longstanding precedent, which holds that government officials are not liable for damages under Section 1983 unless their conduct "violate[d] clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

Felkner does not contend that the Rhode Island Supreme Court misapplied this Court's qualified immunity precedent. Instead, he urges the Court to grant review in this case to overturn it—either by abolishing the "clearly established" law standard or by modifying that standard in some way so his case survives. There is no basis to do either. The qualified immunity standard—which is grounded in this Court's interpretation of Section 1983—is deeply entrenched in this Court's jurisprudence. Indeed, over decades, this Court has stated, restated, and refined the contours of qualified immunity in dozens of opinions, cementing an analytical framework that

lower courts across the country apply in hundreds, if not thousands, of cases each year.

Felkner offers no sound reason for overhauling that precedent. His petition is devoted almost exclusively to arguments that the Court has erred for four decades by adopting and applying the wrong standard for qualified immunity. But "an argument that [the Court] got something wrong—even a good argument to that effect—cannot by itself justify scrapping settled precedent." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015). In any event, none of Felkner's various suggestions for how the Court might scrap or modify its qualified immunity precedent—by either eliminating the clearly established law standard altogether, eliminating that standard in cases that do not involve emergencies, or diluting that standard for First Amendment claims—would help him. Under any plausible standard, respondents are entitled to qualified immunity in this case. Finally, and perhaps most importantly, Felkner makes virtually no effort to explain how he can overcome the *stare decisis* barrier standing in his way.

Over the past few years, this Court has denied numerous certiorari petitions urging the Court to revisit its qualified immunity precedent. There is no basis for any different result here. Indeed, this case is a particularly poor vehicle to reconsider the Court's qualified immunity doctrine because none of Felkner's proposed changes to the doctrine would change the result in this case. And respondents' treatment of his recalcitrant conduct as a student falls within the range of discretion that the First Amendment affords educational institutions.

The petition should be denied.

STATEMENT OF THE CASE

A. Factual Background

Felkner is a self-described "conservative libertarian." Pet. App. 5a. In the fall of 2004, he nevertheless chose to enroll in Rhode Island College to pursue a Masters of Social Work (MSW) degree—a two-year program with "a distinct sociopolitical ideology." *Id.* at 5a, 24a, 70a. Felkner was of course free to enroll in the MSW program; but once enrolled, he was not free to disregard generally applicable course requirements. Felkner failed to complete the program within two years—and had not completed the program's requirements by April 2008. *Id.* at 12a. And throughout his time in the program, he "was no doubt a challenging student." *Id.* at 93a. Felkner clashed with his professors over basic course requirements that applied to all students—a product of Felkner's apparent belief that his "conservative libertarian" views excused him from completing the assigned coursework in the MSW program in which he voluntarily enrolled.

1. Felkner's first-semester Policy and Organizing course was taught by Professor James Ryczek. Shortly after the semester started, Felkner complained to Ryczek about another professor's decision to show the movie *Fahrenheit 9/11*, claiming that it was biased and insisting that a rebuttal film be shown. *Id.* at 5a, 25a. That professor obliged, and a rebuttal film was shown. *Id.* at 6a. At the same time, Ryczek advised Felkner that students who "consistently hold[] antithetical views to those that are espoused by the profession might ask themselves whether social work is the profession for them," as their work in the profession may become "increasingly

uncomfortable." *Id.* at 26a. Likewise, Ryczek continued, a particular school "might not be a good fit" for students whose views are "antithetical" to the "views in the curriculum." *Id.* But Ryczek made clear that he was not "suggesting that [Felkner was] such a person," and he stressed that he valued "open discussion and debate." *Id.* at 25a-26a. Neither he nor his fellow faculty members "would want to quash alternative views." *Id.* at 25a.

In Ryczek's class, students were assigned a group project that required them to advocate for a social welfare issue in a policy paper and an in-class debate. *Id.* at 6a.[1] Felkner joined a group advocating in favor of Rhode Island Senate Bill (SB) 525, a proposed amendment to a temporary cash assistance program. *Id.* Later in the semester, however, Felkner asked Ryczek for permission to advocate *against* SB 525—directly contrary to the position he had agreed to present. *Id.* at 6a-7a. Ryczek declined to allow Felkner to change his position "out of concerns of fairness and to allow [Felkner] an opportunity to learn how to advocate for a position that he did not agree with." *Id.* at 30a.

"[C]ontrary to Ryczek's instructions," Felkner wrote his policy paper advocating against SB 525. *Id.* Felkner's failure to follow instructions continued into the in-class debate, where Felkner not only argued against his group's position, but gave a presentation that was utterly "unprofessional": Dressed "'with a rumpled shirt, tousled hair, upturned collar sport

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[1] Although Ryczek indicated that students would also lobby the Rhode Island General Assembly in the spring semester, it is undisputed that "Felkner was never compelled to lobby or testify at a public hearing." Pet. App. 7a n.3 (quoting Pet. App. 101a).

jacket, and undone tie,'" Felkner proceeded to "mock[]" the "social welfare profession" while offering "no research to support" the position he was assigned to cover. *Id.* at 62a-63a. Because Felkner "had not followed the directives of the assignment," he received a failing grade for both the paper and the debate. *Id.* at 73a-74a. Ryczek gave Felkner an opportunity to rewrite his paper, which Felkner declined. *Id.* at 74a.

Ultimately, Felkner received a C+ for the course. *Id.* at 7a. Felkner appealed the grade, and the appeal was denied. *Id.* at 7a-8a.

2. Felkner's second-semester Policy and Organizing course was taught by Professor Roberta Pearlmutter. For this semester, Pearlmutter permitted Felkner to work on a project advocating against SB 525. *Id.* at 9a. But she instructed Felkner that, like everyone else in the class, he had to work in a group with classmates or else his grade would be penalized. *Id.* Felkner again failed to follow instructions; rather than working with classmates, he worked with a student from another school and a local talk radio personality. *Id.*

During this semester, Felkner also began recording class sessions without consent and posting editorialized transcripts of in-class comments on his personal website. *Id.* at 33a-34a, 61a. His classmates complained to Pearlmutter—they found his posts belittling and incorrect, and they believed that his recording of class sessions would stifle classroom discussion. *Id.* at 33a-34a, 61a-62a. Pearlmutter allowed the students to express their concerns to Felkner in class, a discussion that Felkner then detailed on his website. *Id.* at 34a. Ultimately, the College's Academic Standing Committee instituted ethics proceedings against Felkner and found him

guilty of deceptively recording conversations with Pearlmutter without her consent. *Id.* at 10a.

3. The next component of the MSW program required Felkner to complete both a field placement and an integrative project. *Id.* at 11a. For his field placement, Felkner selected, and the College approved, an internship in the Rhode Island Governor's office working on welfare-reform legislation. *Id.* But Felkner's faculty advisers concluded that welfare reform was not a suitable topic for the integrative project, so Felkner agreed to focus that project on healthcare reform. *Id.* at 11a-12a. Because his field placement and integrative project involved distinct topics, Felkner was given additional time to complete his integrative project. *Id.* at 12a.

Felkner worked on his integrative project throughout 2006 and throughout 2007. *Id.* In January 2008, he received an additional extension until May 2009, on the condition that he submit at least a section of the project by April 2008. *Id.* He failed to do so and accordingly did not receive his degree. *Id.* at 12a, 131a.

B. Proceedings Below

1. In December 2007, Felkner filed suit in the Rhode Island Superior Court against respondents alleging multiple violations of the Rhode Island Constitution and the U.S. Constitution. *Id.* at 12a. He sought equitable relief and damages under 42 U.S.C. § 1983, contending that respondents' conduct towards him during his enrollment violated his First and Fourteenth Amendment rights.

The trial court granted respondents' motion for summary judgment on all of Felkner's claims. Pet. App. 126a-92a. As to Felkner's First Amendment

claims, the trial court carefully addressed each of the actions that Felkner challenged and explained why it did not demonstrate a violation of Felkner's First Amendment rights. *Id.* at 146a-72a.

2. In a divided decision, the Rhode Island Supreme Court affirmed in part and vacated in part. *Id.* at 69a-125a (majority opinion); *Felkner v. Rhode Island Coll.*, 203 A.3d 433, 462-68 (R.I. 2019) (Robinson, J., concurring in part and dissenting in part); *id.* at 468-72 (Indeglia, J., concurring in part and dissenting in part).

a. The majority affirmed the grant of summary judgment as to all of Felkner's claims aside from a subset of his First Amendment claims. Pet. App. 87a-125a. In doing so, the majority observed that "the academic actions taken with respect to Felkner were, ultimately, to enforce the required components of the MSW degree," and that Felkner failed to "show that [respondents] treated students with conservative ideologies differently than they treated students with liberal ideologies." *Id.* at 108a-09a. It further observed that, when it comes to academic decisions, courts must "show great respect for faculty's professional judgment." *Id.* at 93a (citation omitted).

The majority nevertheless believed that Felkner's First Amendment claims were not amenable to summary judgment. *Id.* at 87a-103a. Quoting a case about high-school student newspapers that is admittedly "distinguishable from the case at hand in several significant respects," the majority held that "'educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.'" *Id.* at

90a & n.14 (quoting *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 273 (1988)). And in this case, the majority reasoned, "genuine issues of material fact exist as to whether [respondents'] justifications for their actions were truly pedagogical or whether they were pretextual." *Id.* at 94a.

Specifically, the majority agreed that requiring a student to "debate a topic from a perspective that is contrary to his or her own views may well be reasonably related to legitimate pedagogical concerns," but believed that this relationship was more "tenuous" if "the student is told that he or she must then lobby for that position in a public forum or that his or her viewpoint is not welcome in the classroom because it is contrary to the majority viewpoint of the students and faculty." *Id.* And as far as evidence supporting Felkner's claims, the majority "[went] no further" than an affidavit by a dean at another university who believed that Felkner's allegations of respondents' conduct depicted a "substantial departure from the norms of academic debate and scholarship that should prevail at colleges and universities." *Id.* at 91a.

The majority declined to address respondents' qualified immunity defense. *Id.* at 120a-21a. Instead, the court remanded that issue for the trial court to consider in the first instance. *Id.* at 121a.

b. Justice Robinson dissented in relevant part. 203 A.3d at 462-68. He "vigorously" disagreed with the majority's vacatur of summary judgment on the First Amendment claims, explaining that there is "nothing in this case on which to base a legal conclusion that [respondents'] actions were not reasonably related to any legitimate pedagogical purpose but rather were pretextual." *Id.* at 462, 467.

Indeed, Justice Robinson observed, "this case involves at bottom nothing more than some petty academic squabbles and certainly nothing of constitutional magnitude." *Id.* at 462.[2]

3. On remand, the trial court concluded that respondents are entitled to qualified immunity as to Felkner's First Amendment claims. Pet. App. 23a-67a. The court explained that, under this Court's settled qualified immunity precedent, respondents are entitled to immunity unless "existing case law was clearly established so as to give [them] fair warning that their conduct violated [Felkner's] constitutional rights." *Id.* at 44a (citation omitted). Based on an extensive survey of "the landscape of caselaw involving academic decisions by public institutions," *id.* at 44a-57a, the court held that respondents' conduct had not "been clearly established as violations of a student's constitutional rights between the fall of 2004 and early 2007," *id.* at 57a.

The court further explained that existing precedent did not "'give [respondents] fair warning that their conduct violated [Felkner's] constitutional rights.'" *Id.* at 66a. Indeed, "under the facts here and under relevant caselaw," a reasonable person in any of respondents' positions "would not have understood that his conduct violated [Felkner's] constitutional rights." *Id.*

4. The Rhode Island Supreme Court unanimously affirmed. *Id.* at 3a-22a. Applying this Court's longstanding qualified immunity precedent, the court

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[2] Justice Indeglia concurred in most of the majority's decision, but dissented as to two aspects of the court's due process analysis, which are not at issue here. 203 A.3d at 468-72.

held that respondents are entitled to qualified immunity if they did not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 16a-17a (citation omitted). The court accordingly considered "whether the rights at issue were clearly established at the time of [respondents'] alleged misconduct" such that "a reasonable official, situated similarly to [respondents], would have understood that the conduct at issue, if proven, contravened the clearly established law." *Id.* at 18a.

The court answered that question in the negative. As the court explained, at the "core" of Felkner's First Amendment claims is his argument that "he was not allowed to complete Master's-level assignments on topics he chose, as opposed to the topics that were assigned to him," and that "when he pursued his chosen topic against the wishes of the faculty," he received "poor grades." *Id.* at 21a. Reviewing this Court's cases—which stress the "great deference" afforded to "academic decisions concerning grades, coursework, and progress within an academic program"—the court found that Felkner's claims lacked a "'sufficiently clear foundation in then-existing precedent.'" *Id.* at 19a-21a (citation omitted). Accordingly, the court concluded that "the law [was not] clearly established," and that "a reasonable person in [respondents'] position would not have had fair warning that their conduct potentially violated [Felkner's] constitutional rights." *Id.* at 21a.

REASONS FOR DENYING THE PETITION

This case involves a fact-specific application of settled law. Felkner does not contend that the Rhode Island Supreme Court misapplied this Court's

longstanding qualified immunity precedent or that its decision conflicts with a decision of any other court. Instead, his only basis for seeking review is his request that the Court overrule or modify its qualified immunity precedent. The Court has repeatedly denied certiorari petitions presenting materially identical questions.[3] There is no reason to do otherwise here. Indeed, this case is a particularly poor vehicle for reexamining the Court's qualified immunity precedent, even if members of the Court were inclined to do so. The petition should be denied.

I. The Rhode Island Supreme Court's Faithful Application Of This Court's Qualified Immunity Precedent Does Not Conflict With Any Decision Of Any Court

Felkner does not argue that his petition satisfies this Court's ordinary criteria for certiorari. *See* Sup. Ct. R. 10. Nor could he. The Rhode Island Supreme Court faithfully applied this Court's long-settled

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[3] *See, e.g.*, *Hulbert ex rel. Estate of Hulbert v. Pope*, No. 23-385 (cert. denied Dec. 11, 2023); *Hamlet v. Hoxie*, No. 23-7 (cert. denied Dec. 11, 2023); *Rogers v. Jarrett*, No. 23-93 (cert. denied Oct. 2, 2023); *N.S. v. Kansas City Bd. of Police Comm'rs*, 143 S. Ct. 2422 (2023) (No. 22-556); *Holloway v. City of Milwaukee*, 143 S. Ct. 1083 (2023) (No. 22-589); *Lewis v. City of Edmond*, 143 S. Ct. 1055 (2023) (No. 22-675); *Haworth v. City of Walla Walla*, 143 S. Ct. 1002 (2023) (No. 22-632); *Novak v. City of Parma*, 143 S. Ct. 773 (2023) (No. 22-293); *Torcivia v. Suffolk County*, 143 S. Ct. 438 (2022) (No. 21-1522); *Cope v. Cogdill*, 142 S. Ct. 2573 (2022) (No. 21-783); *Tucker v. City of Shreveport*, 142 S. Ct. 419 (2021) (No. 21-569); *Cates v. Stroud*, 142 S. Ct. 335 (2021) (No. 20-1438); *Hoggard v. Rhodes*, 141 S. Ct. 2421 (2021) (No. 20-1066); *Cox v. Wilson*, 141 S. Ct. 2596 (2021) (No. 20-1002); *Corbitt v. Vickers*, 141 S. Ct. 110 (2020) (No. 19-679); *Zadeh v. Robinson*, 141 S. Ct. 110 (2020) (No. 19-676); *Baxter v. Bracey*, 140 S. Ct. 1862 (2020) (No. 18-1287).

qualified immunity precedent, and its decision does not conflict with any decision of any other court.

A. The Decision Below Correctly Applies This Court's Settled Precedent

1. In dozens of opinions spanning more than four decades, this Court has repeatedly held that Section 1983 claims are subject to "[t]he doctrine of qualified immunity," which "protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)); *see, e.g.*, William Baude, *Is Qualified Immunity Unlawful?*, 106 Cal. L. Rev. 45, 82, 88-90 (2018) (counting 30 opinions from this Court applying this standard between 1982 and 2017).

The Court has consistently applied this standard in a wide array of Section 1983 cases—including (as relevant here) cases involving school officials and cases involving alleged First Amendment violations. *See, e.g.*, *Lane v. Franks*, 573 U.S. 228, 243 (2014) (First Amendment claim against college official); *Wood v. Moss*, 572 U.S. 744, 757 (2014) (First Amendment claim); *Reichle v. Howards*, 566 U.S. 658, 663-64 (2012) (First Amendment claim); *Safford Unified Sch. Dist. No. 1 v. Redding*, 557 U.S. 364, 377-78 (2009) (claim against school officials); *see also Morse v. Frederick*, 551 U.S. 393, 429-30 (2007) (Breyer, J., concurring in the judgment in part and dissenting in part) (First Amendment claim against school officials).

The Court has also given clear instructions on how to apply this standard: Although "a case directly on

point" is not required, "existing precedent must have placed the statutory or constitutional question beyond debate," *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011), such that "the law was sufficiently clear that every reasonable official would understand that what he is doing is unlawful," *District of Columbia v. Wesby*, 583 U.S. 48, 63 (2018) (citation and internal quotation marks omitted). Accordingly, "[i]t is not enough that the rule is suggested by then-existing precedent"; rather, the "precedent must be clear enough that every reasonable official would interpret it to establish the particular rule the plaintiff seeks to apply." *Id.* In other words, "[t]he rule must be 'settled law.'" *Id.* (citation omitted). And the Court has "repeatedly stressed that courts must not 'define clearly established law at a high level of generality, since doing so avoids the crucial question whether the official acted reasonably in the particular circumstances that he or she faced.'" *Id.* at 63-64 (citation omitted).

2. As Felkner recognizes, the Rhode Island Supreme Court faithfully applied these "command[s]" in this case. Pet. 35; *see* Pet. App. 16a-21a. As the court explained, the "core" of Felkner's First Amendment claims rests on his argument that "he was not allowed to complete Master's-level assignments on topics he chose, as opposed to the topics that were assigned to him," and that he received "poor grades" "when he pursued his chosen topic against the wishes of the faculty." Pet. App. 21a. After reviewing this Court's cases, the Rhode Island Supreme Court concluded that Felkner's claims lacked a "sufficiently clear foundation in then-existing precedent." *Id.* at 19a-21a (quoting *Wesby*, 583 U.S. at 63). That conclusion is unassailable.

a. In support of his First Amendment claims, Felkner cites (Pet. 35) three cases from this Court. None is close. Two of the cases involved universities that discriminated against certain student organizations on campus based on the organizations' viewpoints, which Felkner cites for the unremarkable proposition that "universities are not enclaves immune from the sweep of the First Amendment." Pet. 35 (quoting *Healy v. James*, 408 U.S. 169, 180 (1972); citing *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 835 (1995)). That is a truism no one disputes in this case. And needless to say, these cases about student organizations do not purport to "dictate[]" "'settled law,'" *Wesby*, 583 U.S. at 63 (citation omitted), with respect to "academic decisions concerning grades, coursework, and progress"—decisions that receive especially "great deference" from courts. Pet. App. 20a (citing *Board of Curators of the Univ. of Mo. v. Horowitz*, 435 U.S. 78, 89-90 (1978)); *see Regents of the Univ. of Mich. v. Ewing*, 474 U.S. 214, 225 n.11 (1985) ("University faculties must have the widest range of discretion in making judgments as to the academic performance of students and their entitlement to promotion or graduation." (citation omitted)).

Felkner also cites *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988), for the proposition that "penalizing Felkner for his viewpoint under the pretext of pedagogy offends the First Amendment." Pet. 35. In *Hazelwood*, however, the Court *rejected* a First Amendment challenge to a high school's editorial decisions regarding a school-sponsored student newspaper, and it did so based on a "standard for determining when a school may refuse to lend its name and resources to the dissemination of student

expression." 484 U.S. at 272-73. In that context, the Court explained, "educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns." *Id.* at 273.

As the Rhode Island Supreme Court noted, "*Hazelwood* is distinguishable from the case at hand in several significant respects." Pet. App. 90a n.14. For example, the Court's holding is explicitly limited to "decision[s] to censor a school-sponsored publication, theatrical production, or other vehicle of student expression" that is being "disseminat[ed]" by the school itself, 484 U.S. at 272-73, and does not clearly apply to decisions regarding grades for completing individual class assignments. Nor does *Hazelwood* clearly apply "at the college and university level." *Id.* at 273 n.7 (explicitly reserving that question); *see Student Gov't Ass'n v. Board of Trs. of the Univ. of Mass.*, 868 F.2d 473, 480 n.6 (1st Cir. 1989) (indicating that *Hazelwood* "is not applicable to college newspapers"). Nor does *Hazelwood* even clearly require "viewpoint" neutrality as Felkner insists. Pet. 35; *see, e.g.*, *Ward v. Hickey*, 996 F.2d 448, 454 (1st Cir. 1993) ("[T]he Court in [*Hazelwood*] did not require that school regulation of school-sponsored speech be viewpoint neutral.").

The "contours" of *Hazelwood*'s rule are also not so "well defined" that it "clearly prohibit[ed] [respondents'] conduct in the particular circumstances before [them]." *Wesby*, 583 U.S. at 63. Indeed, *Hazelwood*'s reasonableness test is just as general as other reasonableness tests this Court has rejected for purposes of qualified immunity. *See, e.g.*,

City & Cnty. of San Francisco v. Sheehan, 575 U.S. 600, 613 (2015) (rule requiring use of force to be "objective[ly] reasonable[]" is "too general" (citation omitted)); *Redding*, 557 U.S. at 370, 378-79 (same for rule requiring student searches to be "reasonably related" to discovering "illicit activity" (citations omitted)). The Rhode Island Supreme Court was thus on solid ground in concluding that *Hazelwood* did not "clearly establish[]" that respondents' conduct "amounted to violations of [Felkner's] constitutional rights." Pet. App. 19a-21a.

b. Felkner also briefly cites a handful of court of appeals decisions from circuits far away from Rhode Island. Pet. 36 (citing *Ward v. Polite*, 667 F.3d 727, 734 (6th Cir. 2012); *Axson-Flynn v. Johnson*, 356 F.3d 1277, 1292-93 (10th Cir. 2004); *Brown v. Li*, 308 F.3d 939, 953 (9th Cir. 2002) (opinion of Graber, J.), *cert. denied*, 538 U.S. 908 (2003)).

Even if non-binding circuit cases could demonstrate clearly established law, these cases do not help Felkner. The cited portion of the Ninth Circuit's opinion in *Brown* is not even precedential in the Ninth Circuit. *See Oyama v. University of Haw.*, 813 F.3d 850, 862 (9th Cir. 2015) ("Judge Graber's approach failed to command a majority of the *Brown* panel. Nor has Judge Graber's reasoning been adopted by our precedents since." (citations omitted)), *cert. denied*, 579 U.S. 930 (2016). The Tenth Circuit has held that its decision in *Axson-Flynn*, which involved a unique instance of "religious discrimination," "did not clearly establish that restrictions imposed on school-sponsored speech which are motivated by opposition to a student's viewpoint are necessarily impermissible." *Pompeo v. Board of Regents of the Univ. of N.M.*, 852 F.3d 973,

985 (10th Cir. 2017). And the Sixth Circuit's decision in *Ward v. Polite*—which also involved religious discrimination, 667 F.3d at 737-41—was not issued until 2012, several years after the conduct at issue in this case. *See Brosseau v. Haugen*, 543 U.S. 194, 200 n.4 (2004) (per curiam) ("[Cases] that postdate the conduct in question . . . are of no use in the clearly established inquiry.").

These decisions, therefore, in no way cast doubt on the Rhode Island Supreme Court's decision.

B. The Decision Below Does Not Implicate Any Lower-Court Conflict

The Rhode Island Supreme Court's application of this Court's qualified immunity precedent does not conflict with any decision of any other court. Felkner's brief references to two possible lower-court conflicts (Pet. 14-15) are unavailing.

1. Citing cases from the Eleventh and Eighth Circuits, Felkner suggests (Pet. 14) that some courts apply a less "robust[]" version of qualified immunity when government officials do not have to "make split-second decisions." That is incorrect—those courts apply the same standard.

In the Eleventh Circuit case, *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252 (11th Cir. 2004), the court found that this Court's decisions "clearly established" a student's First Amendment right not to be punished for silently raising his fist instead of reciting the Pledge of Allegiance with his classmates. *Id.* at 1279. The court reached that conclusion based on a lengthy discussion of this Court's decisions recognizing a student's right to abstain from the pledge, *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943), and to engage in non-verbal, non-

disruptive political expression, *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969). These cases, the Eleventh Circuit reasoned, articulated a "clearly established" legal standard that was "sufficiently specific as to give the defendants 'fair warning' that their conduct was constitutionally prohibited." 370 F.3d at 1278. And while the court noted that it was not "unreasonable to expect the defendants," who happened to be "educators," to "be able to apply such a standard," *id.*, the court did not suggest that the law was clearly established *because* the defendants were educators, or suggest that it was articulating a unique qualified immunity standard for the educator context.

The same is true for the Eighth Circuit case, *Intervarsity Christian Fellowship/USA v. University of Iowa*, 5 F.4th 855 (8th Cir. 2021). That case involved a university's "discriminatory enforcement of its Human Rights Policy" against disfavored student organizations. *Id.* at 859. Citing several of this Court's student-organization cases, the Eighth Circuit held that "the law was clearly established that universities may not engage in viewpoint discrimination" against student organizations by selectively barring some organizations from "bas[ing] membership and leadership on specific traits or affirmations of beliefs" while "carving out exemptions and ignoring other violative groups with missions [the defendants] presumably supported." *Id.* at 866-67 & n.11. Although the Eighth Circuit also "asked" whether "'university officers'" should "'receive the same protection as a police officer who makes a split-second decision to use force in a dangerous setting,'" *id.* at 867 (citation omitted), the court did not purport to adopt a unique qualified immunity standard for

university officers. To the contrary, the court relied on its prior decision in *Business Leaders in Christ v. University of Iowa*, 991 F.3d 969 (8th Cir. 2021), which applied the same "clearly established" qualified immunity standard that the Rhode Island Supreme Court applied in this case. *Id.* at 979-80; *see Intervarsity*, 5 F.4th at 866-67 ("If the law was clearly established when the University discriminated against [the student group in *Business Leaders*], it was clearly established when [the same university] did the same thing to InterVarsity.").[4]

2. Felkner also claims (Pet. 15) that the lower courts are "divided over the factual similarity required for a right to be clearly established." For support, he relies solely on a concurring opinion that itself fails to identify any cases underlying the purported split. *See Zadeh v. Robinson*, 928 F.3d 457, 479 (5th Cir. 2019) (Willett, J., concurring in part and dissenting in part), *cert. denied*, 141 S. Ct. 110 (2020). In any event, even if there were such division, this case does not implicate it. None of the cases that Felkner cites is even remotely similar to this case. *See supra* at 14-17. Thus, whatever "'precise[] . . . degree of factual similarity'" is necessary for a right to be "clearly established," Pet. 15 (citation omitted), that line makes no difference to the outcome here.

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[4] Felkner also cites (Pet. 15) cases from the First and Third Circuits denying qualified immunity where, as a factual matter, the defendants did not have to make "split-second" decisions. But neither case suggests that a different qualified immunity standard actually applies in that context.

II. This Court's Review Is Not Warranted To Overrule Settled Qualified Immunity Precedent

Rather than asserting a conflict with a decision of this Court or any other court, Felkner urges the Court to grant review to abolish or modify its settled qualified immunity precedent. Overruling precedent is an extraordinary request in any case, and it is a particularly extraordinary request when it comes to qualified immunity—a doctrine that this Court has reaffirmed in dozens of opinions in "emphatic, frequent, longstanding, and nonideological" terms. Aaron L. Nielson & Christopher J. Walker, *A Qualified Defense of Qualified Immunity*, 93 Notre Dame L. Rev. 1853, 1858 (2018). Felkner's arguments for jettisoning the Court's qualified immunity precedent are unsound, and Felkner cannot overcome the force of *stare decisis* in any event.

A. Felkner's Arguments For Overturning Settled Qualified Immunity Precedent Fall Flat

This Court's qualified immunity precedent is consistent with Section 1983's text and common-law backdrop. Felkner's requests to overrule that precedent do not warrant review in this case.

1. The doctrine of qualified immunity reflects this Court's "'interpret[ation of] the intent of Congress in enacting § 1983'" in light of existing "common-law tradition[s]." *Buckley v. Fitzsimmons*, 509 U.S. 259, 268-69 (1993) (citation omitted). Section 1983 provides a cause of action against any person who deprives an individual of federally guaranteed rights "under color of" state law. 42 U.S.C. § 1983. At the time of Section 1983's enactment in 1871,

"government actors were afforded certain protections from liability" under the common law. *Filarsky v. Delia*, 566 U.S. 377, 383 (2012). Such immunities were deemed necessary to secure the "'public good,'" as they protected "those acting on behalf of the government" from being "'unduly hampered and intimidated in the discharge of their duties' by a fear of personal liability." *Id.* (citations omitted); *see id.* at 390 ("[T]he government interest in avoiding 'unwarranted timidity' on the part of those engaged in the public's business [is] 'the most important special government immunity-producing concern.'" (citation omitted)).

Because these common-law immunities "were so well established" and so vital to the functioning of government, the Court has interpreted Section 1983 on the presumption that Congress intended to retain them. *Buckley*, 509 U.S. at 268; *see Filarsky*, 566 U.S. at 389 ("We read § 1983 'in harmony with general principles of tort immunities and defenses.'" (citation omitted)). "This interpretation has been reaffirmed by the Court time and again and is now an entrenched feature of [the Court's] § 1983 jurisprudence." *Rehberg v. Paulk*, 566 U.S. 356, 361 (2012).

Under this interpretation of Section 1983, the Court has recognized that most government officials receive an immunity that is "qualified" insofar as it protects them from damages liability for good-faith, reasonable conduct. *See Harlow*, 457 U.S. at 806-07, 815; *Pierson v. Ray*, 386 U.S. 547, 555 (1967). This immunity reflects the core principles animating the common-law immunities that existed in 1871, at which point it was well-settled that "a public officer, invested with certain discretionary powers, never has been, and never should be, made answerable for any

injury" based on a good-faith "error in judgment"; liability would attach only if official exceeded "the scope of his authority" or if the error was "influenced by malice, corruption, or cruelty." *Wilkes v. Dinsman*, 48 U.S. (7 How.) 89, 129-31 (1849); *see also, e.g.*, Scott A. Keller, *Qualified and Absolute Immunity at Common Law*, 73 Stan. L. Rev. 1337, 1368-77 (2021) (collecting nineteenth-century authorities applying this standard); *Filarsky*, 566 U.S. at 388-89 (same).

Modern qualified immunity doctrine serves the same objective: It "gives government officials breathing room to make reasonable but mistaken judgments about open legal questions," *Lane*, 573 U.S. at 243 (citation omitted), while ensuring that officials who are "plainly incompetent" and "those who knowingly violate the law" are held to account, *Wesby*, 583 U.S. at 63 (citation omitted). By implementing this objective through the "'clearly established' standard," the Court's qualified immunity precedent "protects the balance between vindication of constitutional rights and government officials' effective performance of their duties by ensuring that officials can 'reasonably . . . anticipate when their conduct may give rise to liability for damages.'" *Reichle*, 566 U.S. at 664 (alteration in original) (citation omitted). This balance is "importan[t] . . . 'to society as a whole.'" *Sheehan*, 575 U.S. at 611 n.3 (quoting *Harlow*, 457 U.S. at 814).

2. Seeking to overrule this settled precedent, Felkner argues that the "clearly established" standard should be abolished altogether, modified, or limited to some subset of cases. These arguments cannot surmount the force of *stare decisis*. *See infra*

at 27-31. But even on their own terms, the arguments do not warrant review in this case.[5]

a. Felkner principally argues (Pet. 17-25) that the Court should overrule the "clearly established law" standard for qualified immunity articulated in *Harlow* and applied in dozens of this Court's decisions in the 40 years since. This argument is unavailing.

As an initial matter, Felkner fails to adequately identify a replacement standard. He seems to desire a standard that hews more closely to the common-law immunity standard per "the Court's reasoning in *Pierson*." Pet. 19. But he also argues at length that "the *Pierson* Court erred." *Id.* at 25-33.

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[5] In the body of his petition, Felkner also suggests (Pet. 25-33, 37) that this Court "erred" in recognizing "the doctrine [of qualified immunity] as a whole." But Felkner's questions presented (Pet. ii-iii) do not ask the Court to overrule the doctrine as a whole, so that broader issue is not before the Court. *See Wood v. Allen*, 558 U.S. 290, 304 (2010) (discussing Sup. Ct. R. 14.1(a)). Felkner's claims of error are also meritless. Felkner primarily criticizes (Pet. 27-30) this Court's reasoning that if Congress had intended to abolish common-law immunity defenses when enacting Section 1983, it would have done so "clearl[y]." *Filarsky*, 566 U.S. at 389 (citation omitted). But Felkner's own authority *supports* this reasoning: "[S]tatutes will not be interpreted as changing the common law unless they effect the change with clarity." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 318 (2012) (cited at Pet. 29). Felkner also points (Pet. 30-33) to a "notwithstanding" clause that was dropped from Section 1983's text when Congress passed the Revised Statutes of 1874. But it is "[t]he revised form" of the statute that controls, *Continental Cas. Co. v. United States*, 314 U.S. 527, 530 (1942), and this Court has already rejected arguments (like Felkner's) that rest on "the flawed premise that Congress did not intend to change the meaning of existing laws when it revised the statutes in 1874," *Maine v. Thiboutot*, 448 U.S. 1, 8 & n.5 (1980).

In any event, the Court has appropriately rejected the notion that "the precise contours of official immunity [under Section 1983] can and should be slavishly derived from the often arcane rules of the common law." *Anderson v. Creighton*, 483 U.S. 635, 645 (1987). This is in part because the Section 1983 cause of action "differs in important ways" from "pre-existing common-law claims" insofar as "it reaches constitutional and statutory violations that do not correspond to any previously known tort." *Rehberg*, 566 U.S. at 366. And it recognizes that "if officials were unable to determine whether they were protected by [qualified immunity] without entangling themselves in the vagaries of the [archaic] common law," the fair-notice principle underlying the doctrine "would be utterly defeated." *Anderson*, 483 U.S. at 646. By requiring an inquiry into the legal reasonableness of the official action, the clearly established law standard harmonizes the values underlying the common-law immunities with Section 1983's scope and the practicalities of Section 1983 litigation. *See Harlow*, 457 U.S. at 807-09, 813-19.

Moreover, Felkner never explains how reverting to a more traditional common-law standard would help him here. As explained above, the common law typically shielded public officials from liability for subjectively good-faith conduct that lacked malice. *See supra* at 21-22; *Anderson*, 483 U.S. at 645. That standard applied to public officials in the education setting. *See Wood v. Strickland*, 420 U.S. 308, 318 & n.9 (1975) (collecting cases demonstrating the "[c]ommon-law tradition" that "public school officials" were "protected from tort liability under state law for all good-faith nonmalicious action taken to fulfill their official duties"); Keller, *supra*, at 1389 & n.336

(collecting nineteenth-century treatises showing that "[p]ublic-school officials at common law had a freestanding good-faith defense for their discretionary acts"). But Felkner has not even tried to argue that respondents acted maliciously or otherwise lacked good faith. Thus, even if the Court were inclined to "[o]verrul[e] *Harlow*" and replace it with "a 'good faith' defense," Pet. 19-21, the result in this case would be the same.

b. Felkner alternatively suggests that the Court should jettison its settled qualified immunity precedent in some subset of cases—specifically, cases that involve "non-emergent" situations or "First Amendment rights." Pet. 14, 17; *see id.* at ii, 24-25, 34-35. These arguments are unconvincing.

For one thing, this Court has long "been unwilling to complicate qualified immunity analysis by making the scope or extent of immunity turn on the precise nature of various officials' duties or the precise character of the particular rights alleged to have been violated." *Anderson*, 483 U.S. at 643. Indeed, like Felkner, the plaintiffs in *Anderson* offered a series of possible "exception[s]" to "the usual principles of qualified immunity law" that would have encompassed "the circumstances of [that] case." *Id.* at 642. The Court rejected that approach, observing that "[a]n immunity that has as many variants as there are modes of official action and types of rights would not give conscientious officials that assurance of protection that it is the object of the doctrine to provide." *Id.* at 643. There is no reason to revisit that sensible conclusion here.

Felkner's proposed exceptions are also unprincipled. Felkner first suggests that qualified immunity should be limited to "emergent situations"

and should not apply to officials who "ha[ve] time to deliberate prior to engaging in the [challenged] conduct." Pet. ii, 4; *see id.* at 14, 24-25. Felkner does not ground this distinction in any legal authority. Indeed, not only is it flatly inconsistent with this Court's precedent applying qualified immunity in such circumstances, but it is also inconsistent with the traditional immunities under the common law, which protected officials in various "non-emergent" situations—including, most notably, public school officials. *See supra* at 24-25; *see also, e.g.*, *Filarsky*, 566 U.S. at 386-89 (collecting cases involving lawyers, justices of the peace, notaries, trustees, school board members, and public commissioners).

Because this novel theory is unmoored from the law and historical practice, Felkner is also unable to pin down its scope. At various points in his petition, Felkner claims that his exception to qualified immunity would cover officials in "non-emergent" situations (Pet. 17), officials who are not making "split-second decisions" (Pet. 14), officials who are "deskbound" and "have ample time to ponder decisions" (Pet. i), officials operating in the "safe and unrushed confines of academia" (Pet. 14), and officials who "have sufficient time to obtain and act upon legal advice" (Pet. 24). Nor does Felkner explain how any of these distinctions would apply in the real world. Indeed, all of them are a recipe for the kind of "significant line-drawing problems" that this Court has often rebuffed. *Filarsky*, 566 U.S. at 391; *see Anderson*, 483 U.S. at 646.

Felkner also argues that a "lower" qualified immunity standard should apply "[i]n the First Amendment context." Pet. 34-35. To justify this distinction, Felkner asserts that "it is not difficult for

college officials to determine how the relevant legal doctrine applies to the facts at hand." *Id.* As Felkner acknowledges, however, even federal judges trained in the law "have recognized [that] First Amendment parameters may be especially difficult to discern in the school context," and that "[m]any aspects of the law with respect to students' speech are difficult to understand and apply." *Id.* at 14-15 (internal alteration omitted) (first quoting *Abbott v. Pastides*, 900 F.3d 160, 174 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 1292 (2019); then quoting *Hosty v. Carter*, 412 F.3d 731, 739 (7th Cir. 2005) (en banc), *cert. denied*, 546 U.S. 1169 (2006)). Certainly school officials who are not lawyers would face a similar difficulty. The usual qualified immunity standard—which ensures that "[p]ublic officials need not predict, at their financial peril, how constitutional uncertainties will be resolved"—is thus "as apt here as it [is]" in other contexts. *Hosty*, 412 F.3d at 739.

In any event, Felkner's preferred "fair and clear warning" standard (Pet. 34) would not help him because, as the Rhode Island Supreme Court correctly held, none of the inapposite cases cited by Felkner would have given respondents "fair warning that their conduct potentially violated [Felkner's] constitutional rights." Pet. App. 21a. Thus, altering the qualified immunity standard for First Amendment claims as Felkner suggests would not affect the outcome of this case.

B. *Stare Decisis* Compels Adherence To The Court's Qualified Immunity Precedent

Although Felkner grounds his challenge on overruling precedent, Felkner makes virtually no effort to satisfy the particularly "heavy burden" of

overcoming *stare decisis* in this context. *Vasquez v. Hillery*, 474 U.S. 254, 266 (1986). That alone warrants denial of the petition.

1. The doctrine of *stare decisis* "is 'a foundation stone of the rule of law.'" *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015) (quoting *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014)). Although "not an inexorable command," adherence to precedent "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Id.* (citation omitted). Overruling precedent is thus an "exceptional action," *Arizona v. Rumsey*, 467 U.S. 203, 212 (1984), that this Court does not entertain without "'special justification'—over and above the belief 'that the precedent was wrongly decided,'" *Kimble*, 576 U.S. at 455-56 (quoting *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 266 (2014)).

The bar is even higher here because this Court's qualified immunity decisions reflect the Court's understanding of a federal statute. *See supra* at 20-21; *see also* Aaron L. Nielson & Christopher J. Walker, *Qualified Immunity and Federalism*, 109 Geo. L.J. 229, 249 (2020) (explaining that "qualified immunity is statutory in character"). And as the Court has repeatedly explained, "[t]he principle of *stare decisis* has 'special force'" for statutory precedent because "Congress may overturn or modify any aspect of [that precedent]" as it sees fit. *Halliburton*, 573 U.S. at 274 (citation omitted). Indeed, the "enhanced force" of "statutory *stare decisis* [applies] even when a decision has announced a 'judicially created doctrine' designed to implement a federal statute." *Kimble*, 576 U.S. at 456 (citation

omitted). Under this "comparatively strict" form of *stare decisis*, "'the Court has ordinarily left the updating or correction of erroneous statutory precedents to the legislative process.'" *Allen v. Milligan*, 599 U.S. 1, 42 (2023) (Kavanaugh, J., concurring in part) (citation omitted); *see Kimble*, 576 U.S. at 456, 462.

That principle forcefully applies here. The qualified immunity standard from *Harlow* is more than 40 years old, and it has been applied in dozens of opinions of this Court and thousands of cases in the lower courts. Congress is undoubtedly aware of this standard and fully capable of abolishing or modifying it. Indeed, Congress has repeatedly considered legislation aimed at doing precisely that.[6] But "until and unless" Congress acts, "statutory *stare decisis* counsels [this Court's] staying the course." *Milligan*, 599 U.S. at 39 (citing *Kimble*, 576 U.S. at 456).

Other *stare decisis* considerations cut the same way. For example, the qualified immunity standard does not arise in some "one-off" case but has been established and reaffirmed in a "long line of precedents" dating back several decades. *Bay Mills*, 572 U.S. at 798. And while the force of statutory *stare decisis* obviates the need to conclusively determine "whether [this Court's precedent] has actually generated reliance," *Kimble*, 576 U.S. at 457, this Court has recognized that public officials rely on the

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[6] *See, e.g.*, Ending Qualified Immunity Act, H.R. 2847, 118th Cong. (2023); Qualified Immunity Act of 2023, H.R. 233, 118th Cong. (2023); Constitutional Accountability Act, S. 3415, 117th Cong. (2021); Qualified Immunity Abolition Act, H.R. 8979, 116th Cong. (2020); Reforming Qualified Immunity Act, S. 4036, 116th Cong. (2020).

protection of qualified immunity to "carry[] out the work of government" without the "'unwarranted timidity'" that can accompany the prospect of damages suits, *Filarsky*, 566 U.S. at 389-90 (citation omitted). State and local governments also rely on qualified immunity to "attract talented individuals," as they are able to assure such individuals that they need not be "'deterred by the threat of damages suits from entering public service.'" *Id.* at 390 (citation omitted). Overhauling qualified immunity would thus upset expectations of individual government officials and their governmental employers. Taking that dramatic step in this case would be especially troubling given that respondents' conduct occurred nearly two decades ago.

2. Despite asking the Court to overrule longstanding precedent, Felkner declines to engage in any extended analysis of the *stare decisis* factors. Instead, after devoting the bulk of his petition to arguing that the Court's decisions are wrong and have undesirable policy consequences—arguments that generally are insufficient to overcome statutory *stare decisis*, *see, e.g.*, *Kimble*, 576 U.S. at 460-65; *Halliburton*, 573 U.S. at 276-77—Felkner claims that "full consideration" of *stare decisis* "must await merits briefing." Pet. 37. Especially given that Felkner's entire pitch for this Court's review hinges on overcoming *stare decisis*, his refusal to seriously analyze the *stare decisis* factors warrants denial.

The abbreviated *stare decisis* arguments offered by Felkner do not withstand scrutiny. Although Felkner claims that the "lack of any textual foundation" and recent "scholarship advances" justify "reconsideration of qualified immunity," Pet. 37, each of these arguments "is just a different version of the argument

that [the Court's precedent] is wrong," *Kimble*, 576 U.S. at 463. And while Felkner suggests that the "clearly established law" standard is "unworkable" because this Court has granted review to enforce it in several cases over the years, Pet. 13, 37, that standard is applied in hundreds, if not thousands, of cases across the federal courts each year. A handful of errors in such a large sample size hardly demonstrates that the standard is so unworkable that it requires the kind of fundamental overhaul that Felkner demands. Indeed, it shows the opposite.

III. This Case Would Be A Poor Vehicle For Overhauling Qualified Immunity

Even if the Court were interested in revisiting its qualified immunity precedent, this case would be a particularly poor candidate for doing so.

First, as explained, none of Felkner's proposed departures from existing precedent would change the outcome of this case. Respondents would be entitled to qualified immunity on the facts of this case even if the Court altered the inquiry to focus on respondents' good faith or diluted the "clearly established" standard. *See supra* at 24-25, 27.

Second, any First Amendment violation in this case is borderline at best. In its initial opinion, the Rhode Island Supreme Court majority seemed to believe that, under *Hazelwood*, requiring a student to "lobby for [a particular] position in a public forum" or telling a student "that his or her viewpoint is not welcome in the classroom because it is contrary to the majority viewpoint of the students and faculty" may not be "reasonably related to legitimate pedagogical concerns." Pet. App. 94a. But all agree that Felkner was not required to lobby for a particular position. *Id.*

at 7a n.3. Nor was Felkner told that his viewpoints were "not welcome in the classroom"; instead, he was advised that his viewpoint may not align with the viewpoints underlying the social-work program he chose, told to complete his class assignments as instructed, and graded accordingly. *See supra* at 3-6.

Finally, and relatedly, this case does not implicate any widespread concerns about "silenc[ing] student . . . speech on university campuses," as Felkner suggests. Pet. 25. Indeed, Felkner has always been free to express his viewpoints on campus. The "core" of this case is far more mundane—Felkner received "poor grades" for refusing to "complete Master's-level assignments" on assigned topics in the MSW program. Pet. App. 21a. Having chosen to enroll in that program, Felkner was not entitled to demand special dispensation as to the assignments or requirements that applied to all students in the program. Far from a case about "silencing student speech," this case is merely a product of one recalcitrant student's refusal to follow generally applicable rules for his chosen course of study. Nothing about this particular academic squabble, in which the Rhode Island courts have carefully considered Felkner's claims and grievances, warrants this Court's intervention.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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