No. 23-1867

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, INC.,

Plaintiff-Appellant,

v.

JANET LOUISE YELLEN, in her official capacity as Secretary of Treasury; JOSEPH ROBINETTE BIDEN, JR., in his official capacity as President of the United States,

Defendants-Appellees.

On Appeal from the United States District Court
for the District of Massachusetts

BRIEF FOR APPELLEES

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REASONS WHY ORAL ARGUMENT NEED NOT BE HEARD

The United States respectfully submits that oral argument is not needed in this case, because this case involves the straightforward application of settled legal principles regarding standing and mootness. The government stands ready to present argument if this Court believes argument would be beneficial to its resolution of this appeal.

STATEMENT OF JURISDICTION

Plaintiff National Association of Government Employees, Inc. (NAGE) invoked the district court's jurisdiction under 28 U.S.C. § 1331. NAGE's standing is contested. The district court entered its order dismissing the case for lack of subject-matter jurisdiction on October 18, 2023. Plaintiff filed a timely notice of appeal on October 19, 2023. This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

In May 2023, NAGE filed this suit challenging the constitutionality of the debt limit statute, 31 U.S.C. § 3101(b). As its basis for standing, NAGE alleged that its members faced the threat of delayed wage payments and other financial harms beginning in early June 2023, when the government anticipated that, absent an increase or suspension of the debt limit, the Treasury Department would no longer be able to satisfy all of the government's financial obligations. Shortly after NAGE filed this suit, Congress passed and the President signed legislation that suspends the debt limit through January 1, 2025, at which point the debt limit will be increased by the amount of debt issued between the date the legislation was enacted and January 1, 2025. Thus, none of the feared injuries that NAGE alleged came to pass.

In an amended complaint filed after the enactment of the legislation suspending the debt limit, NAGE again pressed its challenge to the statutory debt limit, alleging standing based on its speculation that the government will reach the debt limit in January 2025, that Congress and the President will fail to enact legislation

suspending or increasing the debt limit before the government's resources and extraordinary measures are exhausted, and that NAGE members will experience the financial harms they feared would occur in June 2023.

The question presented on appeal is whether the district court correctly concluded that it lacked subject-matter jurisdiction over NAGE's suit, because NAGE lacks standing to pursue its claims and because, even if NAGE had standing when it first filed suit, its claims were mooted by the enactment of the legislation suspending and eventually increasing the debt limit.

STATEMENT OF THE CASE

A. Statutory and Factual Background

1. The debt limit statute, 31 U.S.C. § 3101(b), establishes the amount of debt that may be incurred by the United States government. The statute provides, in relevant part, that the "face amount of obligations issued under this chapter and the face amount of obligations whose principal and interest are guaranteed by the United States Government (except guaranteed obligations held by the Secretary of the Treasury) may not be more than" a fixed amount set forth in the statute. *Id.* The statute was enacted in 1917 to give the Treasury Department flexibility to manage the government's financial obligations and was codified at 31 U.S.C. § 3101(b) in 1982. *See Williams v. Lew*, 819 F.3d 466, 469 (D.C. Cir. 2016). Since 1982, Congress has

increased the debt limit 32 times.[1] In recent years, Congress has typically done so by enacting legislation that suspends the debt limit for a particular time frame and then raises the debt limit by the amount of debt incurred during the suspension period. *See, e.g.*, Pub. L. No. 116-37, § 301, 133 Stat. 1049, 1057-58 (2019); Pub. L. No. 115-123, § 30301, 132 Stat. 64, 132-33 (2018).

If government borrowing reaches the debt limit before Congress acts to suspend or increase the limit, the Treasury Secretary is authorized to take certain "extraordinary measures" to temporarily enable the government to continue to meet all of its financial obligations. The Treasury Secretary may declare a "debt issuance suspension period" and suspend the issuance of additional Treasury securities to certain government funds or redeem investments held in certain government funds.

[1] Pub. L. No. 98-34, 97 Stat. 196 (1983); Pub. L. No. 98-161, 97 Stat. 1012 (1983); Pub. L. No. 98-342, 98 Stat. 313 (1984); Pub. L. No. 98-475, 98 Stat. 2206 (1984); Pub. L. No. 99-177, 99 Stat. 1037 (1985); Pub. L. No. 99-384, 100 Stat. 818 (1986); Pub. L. No. 100-119, 101 Stat. 754 (1987); Pub. L. No. 101-140, 103 Stat. 830 (1989); Pub. L. No. 101-508, 104 Stat. 1388 (1990); Pub. L. No. 103-66 107 Stat. 312 (1993); Pub. L. No. 104-121, 110 Stat. 847 (1996); Pub. L. No. 105-33, 111 Stat. 251 (1997); Pub. L. No. 107-199, 116 Stat. 734 (2002); Pub. L. No. 108-24, 117 Stat. 710 (2003); Pub. L. No. 108-415, 118 Stat. 2337 (2004); Pub. L. No. 109-182, 120 Stat. 289 (2006); Pub. L. No. 110-91, 121 Stat. 988 (2007); Pub. L. No. 110-289, 122 Stat. 2654 (2008); Pub. L. No. 110-343, 122 Stat. 3765 (2008); Pub. L. No. 111-5, 123 Stat. 115 (2009); Pub. L. No. 111-123, 123 Stat. 3483 (2009); Pub. L. No. 111-139, 124 Stat. 8 (2010); Pub. L. No. 112-25, 125 Stat. 240 (2011); Pub. L. No. 113-3, 127 Stat. 51 (2013); Pub. L. No. 113-46, 127 Stat. 558 (2013); Pub. L. No. 113-83, 128 Stat. 1011 (2014); Pub. L. No. 114-74, 129 Stat. 584 (2015); Pub. L. No. 115-56, 131 Stat. 1129 (2017); Pub. L. No. 115-123, 132 Stat. 64 (2018); Pub. L. No. 116-37, 133 Stat. 1049, (2019); Pub. L. No. 117-50, 135 Stat. 407 (2021); Pub. L. No. 117-73, 135 Stat. 1514 (2021).

See 5 U.S.C. § 8438(g) (Government Securities Investment Fund); *id.* § 8348(j) (Civil Service Retirement and Disability Fund); *id.* § 8909a(c) (Postal Service Retiree Health Benefits Fund).[2]

One such fund is the Government Securities Investment Fund of the Federal Employees' Retirement System Thrift Savings Plan, commonly referred to as the G Fund. The G Fund is a defined-contribution retirement fund for federal employees that is invested in special-issue Treasury securities that mature each day. Thus, the entire balance of the fund matures daily and is ordinarily reinvested in Treasury securities. During a debt issuance suspension period, Treasury may pause reinvestment of all or part of the balance of the G Fund, *see* 5 U.S.C. § 8438(g)(1), thus creating borrowing headroom under the debt limit.[3]

Congress has also directed Treasury to make the G Fund whole when the need for extraordinary measures ends—*i.e.*, after the debt limit has been suspended or increased. Specifically, Congress has provided that, when the debt issuance suspension period ends, the Treasury Secretary "shall immediately issue" to the G Fund obligations that "bear such interest rates and maturity dates as are necessary to

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[2] Treasury has certain other extraordinary measures at its disposal as well, from which it may choose. For example, Treasury may also suspend reinvestment of Treasury securities held by the Exchange Stabilization Fund, suspend sales of State and Local Government Series Treasury securities, and enter into a debt swap transaction with the Federal Financing Bank. *See* U.S. Dep't of the Treasury, *Description of the Extraordinary Measures* (May 31, 2023), https://perma.cc/HM32-PGPG.

[3] *Description of the Extraordinary Measures*, *supra*.

ensure that" the holdings of the G Fund "will replicate the obligations that would then be held" by the G Fund if the investments had not been suspended. 5 U.S.C. § 8438(g)(3). The Treasury Secretary must also compensate the G Fund for the interest that would have been earned by the G Fund during the suspension period had the money in the G Fund been reinvested as usual. *See id.* § 8438(g)(4). In other words, the G Fund's balance is restored to what it would have been had the suspension not occurred.

On many occasions, Congress and the President have agreed to raise the debt limit before the government has reached the debt limit and before Treasury has needed to deploy extraordinary measures. On others, the Treasury Secretary has declared debt issuance suspension periods and engaged in extraordinary measures. Each time Treasury has suspended investment of the G Fund, Treasury has subsequently made the G Fund whole, and no investor in the G Fund has experienced any resulting harm.[4]

2. In early January 2023, the Treasury Secretary announced that the outstanding federal debt was projected to reach the debt limit on January 19, 2023.[5]

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[4] Although the G Fund is not made whole in its entirety until the debt issuance suspension period ends, an individual investor who decides to withdraw all of the funds from their G Fund account during the debt issuance suspension period would receive all of the funds, including interest and earnings, that the individual investor would have received if the debt issuance suspension period had not been declared.

[5] Press Release, U.S. Dep't of the Treasury, Secretary of the Treasury Janet L. Yellen Sends Letter to Congressional Leadership on the Debt Limit (Jan. 13, 2023), https://perma.cc/PM7L-UL8J.

To allow the government to continue meeting its financial obligations, the Treasury Secretary explained that Treasury would implement certain extraordinary measures, including suspending reinvestment of the G Fund.[6] Treasury explained that the fund would be made whole, pursuant to statute, once Congress and the President raised or suspended the debt limit.[7]

These extraordinary measures enabled Treasury to continue meeting the government's obligations for several months. On May 26, 2023, however, the Treasury Secretary announced that, even with these extraordinary measures in place, Treasury might be unable to satisfy all of the government's obligations as early as June 5, 2023.[8] Shortly thereafter, the President of the United States and the Speaker of the House of Representatives announced that they had reached an agreement to address the debt limit.[9]

In keeping with that announcement, on June 3, 2023, Congress and the President enacted legislation suspending the debt limit. This legislation, known as the Fiscal Responsibility Act of 2023, provided that the debt limit statute "shall not

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[6] Secretary of the Treasury Janet L. Yellen Sends Letter to Congressional Leadership on the Debt Limit, *supra*.

[7] Secretary of the Treasury Janet L. Yellen Sends Letter to Congressional Leadership on the Debt Limit, *supra*.

[8] Press Release, U.S. Dep't of Treasury, Secretary of the Treasury Janet L. Yellen Sends Letter to Congressional Leadership on the Debt Limit (May 26, 2023), https://perma.cc/67GF-LMMT.

[9] *See* White House, *Remarks by President Biden on the Bipartisan Budget Agreement* (May 28, 2023), https://perma.cc/VT5W-ZTVG.

apply" from June 3, 2023, through January 1, 2025. Pub. L. No. 118-5, § 401(a), 137 Stat. 10, 48 (2023). The legislation further provides that, on January 2, 2025, the current debt limit will be increased by the obligations incurred from June 3, 2023, through January 1, 2025. *See id.* § 401(b), 137 Stat. at 48. The enactment ended the need for extraordinary measures, and the debt issuance suspension period came to a close. As required by statute and consistent with every prior suspension of G Fund investments during a debt issuance suspension period, the Treasury Secretary fully restored the G Fund to the position that it would have been in had a debt issuance suspension period not been declared.[10]

B. Prior Proceedings

1. NAGE, a union of federal employees, filed this suit against the President of the United States and the Secretary of the Treasury on May 8, 2023, challenging the debt limit statute as unconstitutional. Dkt. No. 1. Although NAGE initially sought an emergency preliminary injunction suspending the debt limit during this litigation, Dkt. No. 7, it withdrew that motion after Congress enacted the Fiscal Responsibility Act, which, as noted, suspended the limit through January 1, 2025. NAGE

[10] *See* U.S. Dep't of the Treasury, Report on the Operation and Status of the Government Securities Investment Fund, January 23, 2023 to June 6, 2023, Pursuant to 5 U.S.C. § 8438(h) (June 29, 2023), https://perma.cc/A8EN-L7XB; Letter from Jonathan Davidson, Assistant Sec'y for Legislative Affairs, U.S. Dep't of the Treasury to The Hon. Kevin McCarthy, Speaker, U.S. House of Representatives (June 29, 2023), https://perma.cc/44PM-AZ69.

subsequently filed an amended complaint seeking declaratory relief on June 20, 2023. Dkt. No. 40.

In its amended complaint, NAGE seeks a declaratory judgment that the debt limit statute is unconstitutional on either of two grounds, both based on the premise that Congress has not specified how the President is to prioritize spending in the event that government borrowing reaches the debt limit and the government can no longer borrow sufficient funds to meet all its financial obligations. First, NAGE argues that the debt limit statute violates the separation of powers, because the President and Treasury Secretary "might take" actions "to comply with" the debt limit—such as prioritizing certain financial obligations over others—without the necessary authorization from Congress to do so. *See* Dkt. No. 40, ¶ 62. Second, NAGE argues that the debt limit statute violates "the principles of equal protection and due process as incorporated into the Fifth Amendment," because Congress has established "no scheme or set of classifications to determine" which actors will "suffer a taking of such property and contractual rights due to them" in the event the President must prioritize certain financial obligations over others when the debt limit is reached and the government has exhausted its resources and extraordinary measures. *Id.* ¶ 71. In that event, NAGE presupposes that there would be a "taking of property or contractual rights or infliction of financial loss" without due process. *Id.*

In support of its standing to pursue its constitutional claims, NAGE's amended complaint relies on harms that NAGE feared its members would have experienced had the President and Congress not agreed to legislation suspending the debt limit in June 2023. For instance, NAGE alleges that its members would have been injured if Congress and the President had not suspended the debt limit, because, according to NAGE, delaying members' paychecks was an action the Treasury Secretary "actively considered and would very likely have taken had the United States run out of cash on June 5, 2023." Dkt. No. 40, ¶ 20. NAGE also alleges harm to its members from the Treasury Secretary's January 2023 decision to declare a debt issuance suspension period and temporarily pause reinvestment of the G Fund. *Id.* ¶¶ 23-26. Specifically, NAGE asserts that, during the debt issuance suspension period, Treasury did not pay interest on member funds deposited in the G Fund and further alleges that, "at least through June 3, 2023," the Treasury Secretary had not made the G Fund whole by crediting that interest to G Fund accounts. *Id.* ¶ 26. NAGE also alleges that, had the President and Congress not enacted legislation increasing the debt limit and "[h]ad the United States run out of cash on June 5, 2023," its members would have "suffered even greater financial injury" due to the "more general default" on the government's obligations that would result and that default's impact on stock and bond markets. *Id.* ¶ 31. The amended complaint also alleges that NAGE members are "certain" to experience these harms when the debt limit goes back into effect in January 2025. *Id.* ¶ 44.

2. The district court granted the government's motion to dismiss the amended complaint for lack of subject-matter jurisdiction. First, the court concluded that NAGE's fears that its members would experience financial losses when the debt limit statute goes back into effect in January 2025 were too speculative to establish standing to challenge the debt limit statute's constitutionality. The court emphasized that it was "entirely conjectural to say that a constitutional violation will crystallize (and thus that the predicted harm will occur) on January 2, 2025." Dkt. No. 58 at 3 n.2. "To find this injury sufficient to confer jurisdiction," the district court explained, it "would have to speculate that another entity not party to this suit—Congress—will, fourteen months from now, both pass a budget for 2025 that causes government debt to exceed the Debt Ceiling Statute and fail to further suspend enforcement of or raise the debt ceiling (despite having always undertaken such action in the past)." *Id.*

The district court then turned to NAGE's alleged injuries stemming from the 2023 debt-limit events and concluded that those alleged injuries were likewise insufficient. With respect to the Treasury Secretary's decision to suspend reinvestment of the G Fund, the court held that NAGE had failed to establish that its members had suffered any "actual" loss as a result of that decision, given that NAGE conceded that the Secretary had "ma[d]e good" on any hypothetical losses G Fund participants could have experienced. Dkt. No. 58 at 3 n.2 (quotation marks omitted). The district court also noted that, even if NAGE members had experienced uncompensated G-Fund-related losses (which they had not), those losses would not

be redressed by a declaration that the debt limit statute was unconstitutional, the only relief NAGE sought in its amended complaint. *See id.*

The district court also found unavailing NAGE's allegations that, at the time it filed its initial complaint in May 2023, it feared its members would not be paid on time if Treasury had exhausted its borrowing capacity and extraordinary measures in June 2023. *See* Dkt. No. 58 at 3-4. The court concluded that, even assuming without deciding that this alleged injury would have been sufficient to confer standing on NAGE in May 2023, NAGE's fear of delayed paychecks was mooted by the Fiscal Responsibility Act, which suspended the debt limit statute. *See id.*

The district court further explained that NAGE could not avoid application of the mootness doctrine by claiming an exception to mootness. *See* Dkt. No. 58 at 4. The district court reasoned that the voluntary-cessation exception to mootness did not apply, because the action that mooted the case—namely, the passage of the Fiscal Responsibility Act—occurred for "reasons unrelated to the litigation." *Id.* at 5 (quotation marks omitted). And the court explained that the capable-of-repetition-yet-evading-review exception did not apply, because NAGE failed to show that the challenged government conduct—debt-limit-induced wage delays and spending reductions—was likely to occur in the future. *See id.* at 6-7. The court emphasized that the government had never reached the point where it lacked sufficient borrowing capacity to pay its obligations, since "Congress has consistently suspended

enforcement of or raised the amount of the debt ceiling limit before any separation of powers violation has crystallized when faced with the issue in the past." *Id.* at 7.

SUMMARY OF ARGUMENT

I. NAGE has at all times lacked standing to pursue its challenges to the debt limit statute, because NAGE has at no point alleged a cognizable injury in fact. NAGE's alleged injuries are based on its conjecture about future events, none of which have occurred in the past or are likely to occur in the future. NAGE alleges that its members will be injured when (1) the President and Congress fail to suspend or increase the statutory debt limit in a timely manner; (2) as a result, the government is unable to meet all its financial obligations; and (3) the President and Treasury Secretary take certain actions in response to that funding shortfall that cause certain alleged harms to NAGE's members. The actions that NAGE alleges the President and Treasury Secretary will purportedly take include delaying wage payments to NAGE's members, failing to pay interest and earnings on NAGE members' G Fund retirement accounts, and defaulting on public debt.

These allegations rest on unsupported speculation and fail to establish NAGE's standing to bring constitutional challenges to the debt limit statute. As the district court emphasized, the political branches have never failed to suspend or increase the debt limit before the government runs out of sufficient funds to meet its financial obligations. That is true despite the fact that growth in government borrowing has necessitated an increase or suspension of the limit more than 30 times since 1982

(roughly every 16 months). Consistent with this unbroken past practice, the President and Congress timely enacted legislation suspending and increasing the debt limit in June 2023, shortly after NAGE filed this suit.

That NAGE's alleged injuries turn on NAGE's speculation that the President and Congress will fail for the first time in the Nation's history to pass timely legislation suspending or increasing the debt limit is reason alone to conclude NAGE lacks standing to pursue its constitutional claims. But the injuries NAGE fears also rest on additional layers of conjecture. It is not clear, for example, what responsive actions the President and Treasury Secretary would take in the unprecedented situation in which the government is unable to meet its financial obligations, on what time frame and in what order they would take those actions, and how long an impasse in which Congress and the President fail to suspend or raise the debt limit would last. NAGE can do no more than speculate that the President and Treasury Secretary would take certain actions that NAGE fears and that a debt-limit impasse would last long enough for NAGE's members to experience the alleged harms.

The only court of appeals to confront a constitutional challenge to the debt limit statute concluded, as the district court did here, that a plaintiff lacks Article III standing when the plaintiff's alleged injury rests on his speculation that the President and Congress will fail at some point in the future to enact timely legislation increasing the debt limit. *See Williams v. Lew*, 819 F.3d 466 (D.C. Cir. 2016). The D.C. Circuit rejected the plaintiff's allegations of future injury as "entirely conjectural" and

inadequate to establish Article III standing, because, among other things, Congress had never failed to timely suspend or increase the debt limit, and there was no plausible basis for concluding that Congress and the President would fail to do so in the future. *Id.* at 473. For the same reasons, NAGE's allegations are overly speculative and insufficient to establish Article III standing to challenge the debt limit statute.

II. The district court correctly recognized that NAGE's feared harms arising from a hypothetical January 2025 debt-limit impasse were insufficient to confer standing to challenge the debt limit statute. But the district court assumed without deciding that NAGE had standing to challenge the debt limit statute when it filed suit in May 2023, based on the union's fear that its members would receive delayed wage payments if the government exhausted its resources and extraordinary measures in the summer of 2023. For the reasons just noted, that assumption was not justified.

Nonetheless, as the district court correctly recognized, even assuming NAGE had standing when it filed suit, its claims were mooted by the enactment of the Fiscal Responsibility Act. After the Act suspended the debt limit, NAGE members no longer faced the possibility in summer 2023 of the debt-limit-induced harms they feared—delayed paychecks, nonpayment of investment returns on their G Fund accounts, or general default on government debt. Accordingly, no "substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment" remained. *Town of Portsmouth v. Lewis*, 813 F.3d 54, 59 (1st Cir.

2016) (quoting *American Civil Liberties Union of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 54 (1st Cir. 2013)).

The district court also correctly concluded that neither the voluntary-cessation nor the capable-of-repetition-yet-evading review exceptions to mootness applies here. Neither exception applies for the simple reason that the government's allegedly unconstitutional conduct (*i.e.*, debt-limited-induced spending cuts) never occurred and has never occurred. The government thus did not voluntarily cease the challenged conduct. Likewise, given that the government did not engage in the allegedly unconstitutional conduct in the first instance (and never has), that conduct cannot logically be described as capable of repetition.

But even assuming the government could somehow be viewed as having previously engaged in the purported unconstitutional conduct, neither exception would apply. The voluntary-cessation exception to mootness is inapplicable where the event that mooted the plaintiff's claims "occurred for reasons unrelated to the litigation." *Lewis*, 813 F.3d at 59. That is precisely the case here: Congress and the President enacted the Fiscal Responsibility Act to suspend the debt limit in 2023 not to evade litigation but to ensure the government had sufficient borrowing capacity to meet its financial obligations. *See id.* Moreover, NAGE has alleged no "reasonable expectation that the challenged conduct will be repeated" after this suit is dismissed, *Boston Bit Labs, Inc. v. Baker*, 11 F.4th 3, 9 (1st Cir. 2021) (quoting *Lewis*, 813 F.3d at

59). Congress and the President have always raised or suspended the debt limit before the government ran out of funds sufficient to meet its financial obligations.

Nor are NAGE's claims capable of repetition yet likely to evade review. That exception "'applies only in exceptional situations'" where the plaintiff shows that there is a reasonable expectation that the plaintiff will be subjected to the same challenged conduct again, and the challenged conduct was too short in duration to be fully litigated in time. *American Civil Liberties Union of Mass.*, 705 F.3d at 57 (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983)). First, as explained, NAGE cannot plausibly allege that the challenged conduct has occurred or will ever occur, and thus cannot reasonably expect to be subject to it in the future. Moreover, NAGE cannot plausibly allege that, even if the government took the extraordinary and unprecedented step of failing to raise or suspend the debt limit in time to avoid a funding shortfall, the duration of any corresponding impasse would be too short to permit litigation of the issues NAGE raises. Thus, even assuming NAGE had standing to challenge the debt limit when it filed its initial complaint in May 2023, its claims are now moot.

STANDARD OF REVIEW

This Court reviews de novo a district court's decision to dismiss a case for lack of standing, *see Wiener v. MIB Grp., Inc.*, 86 F.4th 76, 83 (1st Cir. 2023), or as moot, *see Boston Bit Labs Inc. v. Baker*, 11 F.4th 3, 8 (1st Cir. 2021).

ARGUMENT

NAGE HAS NEVER POSSESSED STANDING TO BRING ITS CLAIMS AND, EVEN IF IT ONCE DID, ITS CLAIMS ARE MOOT.

I. NAGE Lacks Standing To Pursue Its Claims.

NAGE has at all times lacked standing to pursue its constitutional challenges to the debt limit statute. In neither its initial complaint (which predates the Fiscal Responsibility Act) nor in its amended complaint (which postdates the Act) did NAGE adequately allege a cognizable, non-speculative injury-in-fact.

A. To establish Article III standing, plaintiffs must demonstrate an injury that is "concrete, particularized, and actual or imminent." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quotation marks omitted). A "threatened injury must be *certainly impending* to constitute injury in fact." *Id.* (quotation marks omitted). "[A]llegations of *possible* future injury" are not sufficient. *Id.* (quotation marks omitted); *accord Efreom v. McKee*, 46 F.4th 9, 21 (1st Cir. 2022). An "attenuated chain of possibilities[ ] does not satisfy the [impending injury] requirement." *Clapper*, 568 U.S. at 410. The "standing inquiry [is] especially rigorous when reaching the merits of the dispute would force [the Court] to decide whether an action taken by one of the other two branches of the Federal Government was unconstitutional." *Id.* at 408 (quotation marks omitted).

None of the injuries that NAGE alleged in its initial or amended complaints are "concrete, particularized, and actual or imminent." *Clapper*, U.S. at 409 (quotation marks omitted). In both complaints, NAGE alleges that its members will experience

harm if government borrowing reaches the debt limit, extraordinary measures are deployed, those measures are exhausted, Congress and the President fail to raise or suspend the debt limit, and the Executive Branch prioritizes satisfying its financial obligations in a way that causes financial harm to NAGE members. Specifically, NAGE asserts that, at some point during the summer of 2023 (initial complaint) or upon reinstatement of the debt limit in January 2025 (amended complaint), the government will (i) delay wage payments to NAGE's members, (ii) fail to pay interest and earnings on G Fund Accounts owned by NAGE members, and (iii) fail to pay interest and principal on government debt more generally, which would harm NAGE members through its impact on stock and bond markets. None of these allegations establish standing.

All three categories of alleged injuries rest on speculation about "possible" future events that have not occurred in the past, did not occur in the summer of 2023, and are not likely to occur in January 2025. *Clapper*, 568 U.S. at 409 (emphasis omitted) (quotation marks omitted). All three are based on the conjecture that the President and Congress would have failed (in summer 2023) or will fail (in 2025) to suspend or raise the debt limit before Treasury runs out of sufficient funds to meet the government's financial obligations. That speculative conjecture is "unfounded." *Hochendoner v. Genzyme Corp.*, 823 F.3d 724, 731 (1st Cir. 2016). Growth in government borrowing has required Congress to increase the debt limit on more than 30 occasions since 1982 (every 16 months on average) and on more than 70 occasions

since 1962. *See supra* pp. 2-3; *infra* p. 23. On none of these occasions have Congress and the President failed to enact legislation suspending or increasing the debt limit in time to avert a funding shortfall. Congress and the President reached just such an agreement to suspend the debt limit in June 2023, yet again ensuring that Treasury could continue financing the operations of the federal government and underscoring the speculative nature of NAGE's hypothesized injuries. Put simply, NAGE's suggestion that Congress and the President will fail for the first time in history to reach an agreement suspending or raising the debt limit, leading the government to default on its obligations—a conjecture on which all of NAGE's alleged injuries rest—is far too speculative to support its standing. *See Hochendoner*, 823 F.3d at 731 ("[A]t the pleading stage, the plaintiff bears the burden of establishing sufficient factual matter to plausibly demonstrate his standing to bring the action. Neither conclusory assertions nor unfounded speculation can supply the necessary heft.").

NAGE's alleged injures also depend on additional layers of conjecture that render its allegations insufficient to establish its standing. For example, although NAGE contends that its members "will face certain delay in their paychecks" if the President and Congress do not enact legislation increasing the debt limit before January 1, 2025 (Br. 20), that possibility is purely conjectural. Even if the President and Congress were, for the first time in history, unable to agree to suspend or increase the debt limit in a timely manner, it is far from clear what actions the President and Treasury Secretary would take in response and on what timeframe they would take

those actions. NAGE alleges only that the Treasury Secretary was "consider[ing]" delaying their paychecks in the event the government exhausted its resources and extraordinary measures in June 2023. Br. 16; Dkt. No. 40, ¶ 20. But NAGE can only speculate that the Secretary would have taken such action in summer 2023, or that the Secretary would take such action in the event of a future debt-limit impasse. NAGE's speculation is insufficient to establish standing. NAGE has also failed to plausibly allege that if the government exhausted its resources and extraordinary measures, the corresponding impasse in debt-limit negotiations would last sufficiently long that NAGE members' paychecks would be delayed.

The primary factual allegation NAGE offers in support of its contention that NAGE members would receive delayed paychecks in the event extraordinary measures were exhausted only reinforces the highly attenuated and speculative nature of its feared injury. NAGE contends that the warned employees that their paychecks would be delayed in the event the government exhausted its resources and extraordinary measures in June 2023. *See* Br. 16. At the relevant press conference, however, the Secretary emphasized that there was "no precedent" for the government running out of funds sufficient to meet its financial obligations and that it was "difficult to know" what actions the government would take in that event.[11] The Secretary of Veterans Affairs further stated that there was "no blueprint of what

[11] U.S. Dep't of Veterans Affairs, *SecVA Press Conference 5/24/2023* (May 31, 2023), https://perma.cc/MF87-ZECH.

happens to [the agency]" in that circumstance, and as a result, the Secretary could only acknowledge the "potential" that "any government program or payment would be halted or severely delayed." *Id.* These remarks make clear that there was significant uncertainty regarding what actions the Executive Branch would take in the unprecedented situation in which the government became unable to satisfy its financial obligations, undermining NAGE's allegations that Executive Branch officials would necessarily delay federal employee paychecks in that situation.

NAGE's fear that its members will not receive interest and earnings on their G Fund accounts likewise relies on implausible conjectures. Even if the Treasury Secretary suspends reinvestment of the G Fund at some point in 2025 due to the debt limit being reimposed, G Fund account holders would still not experience an actual financial loss. As noted, the Treasury Secretary is required by statute to make the G Fund whole after Congress and the President act to increase or suspend the debt limit. *See* 5 U.S.C. § 8438(g)(1)-(4). And the Secretary has done so in the instances in which the Secretary has exercised her authority to suspend reinvestment of the G Fund, including following the enactment of the Fiscal Responsibility Act. *See supra* pp. 5. 7. NAGE is thus mistaken when it contends that its members suffer an "immediate financial injury" when the Treasury Secretary suspends reinvestment of the G Fund because, according to NAGE, there is "no guarantee of reimbursement." Br. 31. A federal statute provides precisely that guarantee.

NAGE offers an equally unsupportable suggestion that, notwithstanding this statutory guarantee and history, G Fund accountholders might nonetheless be harmed, because Congress might not raise the debt limit sufficiently to make the G Fund whole, or Congress might not appropriate funds sufficient to reimburse the Fund. *See* Br. 32. NAGE provides no basis for its conjecture that Congress would fail to raise the debt limit and appropriate the sums necessary to compensate federal government employees for the interest and principal they would have earned on their government retirement accounts. Treasury and Congress have not failed to abide by and fund the statutory guarantee that the government will make G Fund accounts whole in the past, and there is no reason to conclude that Treasury will be unable to fulfill its statutory obligation in the future.

B. The only other court of appeals to confront a constitutional challenge to the debt limit statute correctly held that the plaintiff's alleged injuries were too speculative to establish Article III standing. *See Williams v. Lew*, 819 F.3d 466 (D.C. Cir. 2016). In that prior case, the plaintiff similarly sought an order declaring the debt limit statute unconstitutional while the debt limit statute was suspended. *Id.* at 472, 474. The plaintiff asserted that he owned Treasury securities and that he would suffer future economic and noneconomic harms once the debt limit statute went back into effect, because the government would become unable to meet its financial obligations and default on interest and principal payments to the holders of Treasury securities. *Id.*

The D.C. Circuit rejected these allegations as "entirely conjectural" and insufficient to establish standing. *Williams*, 819 F.3d at 473. "When considering any chain of allegations for standing purposes," the D.C. Circuit explained, a court "may reject as overly speculative those links which are predictions of future events (especially future actions to be taken by third parties)." *Id.* (quotation marks omitted). The plaintiff's alleged future injuries were based on just such overly speculative predictions. *Id.* The court explained that the plaintiff would be injured only if Congress "fail[ed] to enact legislation suspending or increasing the debt limit despite an impending breach of the statutory ceiling," but Congress had never failed to do so; rather, Congress and the President had enacted timely legislation to suspend or increase the debt limit "on over seventy occasions since 1962." *Id.* The conjectural nature of the plaintiff's injuries was compounded by the fact that the plaintiff's harm would occur only if the government lacked sufficient "cash on hand" to pay all its obligations and chose to prioritize other obligations over its obligations to holders of Treasury securities. *Id.* (quotation marks omitted). The D.C. Circuit held that the plaintiff's predictions about these future events rested on nothing more than speculation, and that the plaintiff had therefore failed to establish standing to seek an order declaring the debt limit unconstitutional. *Id.*

The same is true here. NAGE's alleged injuries similarly rely on an "extended chain" of speculative contingencies. *Williams*, 819 F.3d at 473. As discussed above, NAGE's alleged injuries rest on conjecture that a debt-limit impasse will occur, that

Congress and the President will for the first time in history fail to enact legislation suspending or increasing the debt limit, and that, when the government's resources and extraordinary measures are exhausted, the Treasury Secretary and President will prioritize government spending in a way that harms NAGE's members. Like the allegations in *Williams*, NAGE's allegations are too speculative to establish standing.

C. *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020), does not support a finding that NAGE has established standing here. *See* Br. 36-37. There, a company refused to comply with a civil investigative demand for documents from a federal agency, and the agency filed a petition in federal district court to enforce its demand. *See Seila Law*, 591 U.S. at 208. The company argued that the demand was invalid, because the agency's structure violated separation-of-powers principles. *See id.* The district court rejected that claim and ordered the company to comply with the agency's demand. *See id.*

Before addressing the merits, the Supreme Court noted that the company's standing to appeal the district court's order was "beyond dispute." *Seila Law*, 591 U.S. at 211. As relevant here, the Court concluded that the district court's order caused the company a "concrete injury." *Id.* Under the order, the company was "compelled to comply with the civil investigative demand and to provide documents it would prefer to withhold." *Id.*

By contrast, NAGE does not allege a concrete and imminent injury. Rather, the injuries NAGE alleges would "follow[] from an extended chain of contingencies," *Williams*, 819 F.3d at 473, all based on impermissible conjecture, *see supra* pp. 18-23.

II. Even If Plaintiff Had Standing, Its Claims Are Moot.

A. The district court correctly concluded that NAGE's allegations that its members will experience harm following reinstatement of the debt limit in January 2025 were too speculative to establish Article III standing to challenge the constitutionality of the debt limit statute. *See* Dkt. No. 58 at 3 n.2. The court assumed without deciding, however, that NAGE had adequately alleged standing when it filed suit in May 2023, based on NAGE's speculation that its members would not receive their paychecks on time in the event that the President and Congress failed to suspend or raise the debt limit in 2023 and the government became unable to satisfy all of its financial obligations. *See id.* at 3. The district court was willing to make that assumption because it concluded that any claims arising from NAGE's fear that its members would be injured in the summer of 2023 had been mooted by the enactment of the Fiscal Responsibility Act. *See id.* at 3-4. The court also held that neither the voluntary-cessation nor the capable-of-repetition-yet-evading-review exceptions to mootness applied. *See id.* at 4-7. Accordingly, the district court dismissed NAGE's suit. *See id.* at 7.

The district court need not have assumed that NAGE had standing when it filed suit in May 2023. *Cf. Ramírez v. Sánchez Ramos*, 438 F.3d 92, 97 (1st Cir. 2006)

("[W]e first consider[] … whether the plaintiff carried her initial burden of establishing standing. We then proceed to a mootness inquiry if—and only if—that answer is in the affirmative."). For the reasons explained, NAGE has at all times lacked standing to pursue its constitutional challenges to the debt limit statute, because NAGE's fears of future injury were speculative when it filed its initial complaint and remained so when it filed its amended one. *See supra* Part I.

Even assuming, however, that NAGE's feared injuries were sufficient to establish standing based on potential harms from the government exhausting its resources and extraordinary measures in 2023, the district court correctly held that the enactment of the Fiscal Responsibility Act eliminated any possibility that NAGE members would experience the asserted harms and rendered NAGE's claims moot. *See* Dkt. No. 58 at 3-4. Following the Act's suspension of the debt limit, NAGE members no longer faced the possibility in summer 2023 of debt-limit-induced delayed paychecks, losses on their G Fund accounts, or general default on government debt. Accordingly, no "substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment" remains. *Town of Portsmouth v. Lewis*, 813 F.3d 54, 58 (1st Cir. 2016) (quoting *American Civil Liberties Union of Mass. v. U.S. Conference of Catholic Bishops*, 705 F.3d 44, 54 (1st Cir. 2013)). Thus, there was no longer any "effectual relief" a court could grant. *Harris v. University*

of Mass. Lowell, 43 F.4th 187, 192 (1st Cir. 2022) (quoting *Gulf of Me. Fishermen's All. v. Daley*, 292 F.3d 84, 88 (1st Cir. 2002)).[12]

B. Neither of the two exceptions to the mootness doctrine that NAGE invokes are applicable here. That is because the unconstitutional conduct that NAGE alleges—namely, that, on account of the debt limit, the government will prioritize spending in an unconstitutional manner—has never occurred. Thus, the President and Treasury Secretary have not "voluntarily ceased" an allegedly unconstitutional practice. *American Civil Liberties Union of Mass.*, 705 F.3d at 54. Nor does it make sense to ask whether the challenged unconstitutional action is "capable of repetition," *id.* at 56-57 (quotation marks omitted), given that these Executive Branch officials have never engaged in the allegedly unlawful conduct.

1. In any event, the exceptions would not apply even if the government could somehow be viewed as having engaged in an unconstitutional practice that was mooted by the passage of the Fiscal Responsibility Act. The voluntary-cessation exception to mootness serves "to deter a 'manipulative litigant [from] immunizing itself from suit indefinitely, altering its behavior long enough to secure a dismissal and then reinstating it immediately after.'" *Lewis*, 813 F.3d at 59 (alteration in original)

[12] NAGE contends that the case is not moot because the harms it feared would occur in June 2023 could occur when the debt limit is reinstated in January 2025. *See* Br. 22-23. As explained, the district court properly concluded that NAGE's allegations concerning what may happen in January 2025 were too speculative to support its standing. *See supra* Part I.

(quoting *American Civil Liberties Union of Mass.*, 705 F.3d at 54-55). Accordingly, the exception does not apply where the event that mooted a plaintiff's suit "occurred for reasons unrelated to the litigation." *Id.* That is the case here. Congress and the President enacted the Fiscal Responsibility Act to suspend the debt limit "for reasons unrelated to the litigation." *Id.* They did so not to evade this litigation but rather to ensure the government had sufficient borrowing capacity to meet its financial obligations. *See* Dkt. No. 58 at 5; *see also Boston Bit Labs Inc. v. Baker*, 11 F.4th 3, 10 (1st Cir. 2021) (holding that the voluntary-cessation exception did not apply where the case did not "raise[] the kind of litigation-scheming suspicions typically associated with defendant-initiated mootness").

The voluntary-cessation doctrine is also inapplicable because there is no "reasonable expectation that the challenged conduct will be repeated" after the suit's dismissal. *See Boston Bit Labs,* 11 F.4th at 9 (quotation marks omitted). As noted, Congress and the President have always raised or suspended the debt limit before the government is unable to satisfy its financial obligations. NAGE provides no basis for concluding that the President and Congress will fail to enact necessary legislation for the first time in history in 2025. For this reason alone, NAGE falls far short of demonstrating that the unconstitutional spending cuts it fears are reasonably likely to occur in the future.

Moreover, the unconstitutional conduct that NAGE challenges is that the President and Treasury Secretary will "cancel" spending in a manner that harms

NAGE members, Dkt. No. 40, ¶¶ 65-66, and cause NAGE members to lose "property or contractual rights," *id.* ¶ 71. The President and Treasury Secretary have never taken such actions, and NAGE has not alleged any plausible basis for concluding that the President and Treasury Secretary would take such actions in the future in the event Treasury is unable to satisfy all of the government's obligations. *See supra* Part I. For this reason, too, NAGE cannot establish a reasonable likelihood that the Executive Branch will undertake the purportedly unconstitutional spending reductions it fears. *See, e.g., American Civil Liberties Union of Mass.*, 705 F.3d at 56 (concluding that the exception did not apply where the court could "safely assume that for the foreseeable future the challenged contract terms will not recur").

2. *West Virginia v. Environmental Protection Agency*, 597 U.S. 697 (2022), does not support a different conclusion. *See* Br. 27-28. In *West Virginia*, the Supreme Court was confronted with an environmental rule that the agency had declared it had "no intention of enforcing" because the agency had decided to promulgate a new rule. 597 U.S. at 719-20. The Supreme Court held that the case was justiciable and subject to the voluntary-cessation exception to mootness because the agency was nevertheless defending the legality of its approach and had not indicated that it would not revive enforcement of its existing rule or reimpose a similar rule in the future. *Id.* at 720. NAGE, by contrast, is not challenging a rule or policy that the President or Treasury Secretary could unilaterally reinstitute following dismissal. NAGE's members could only experience the harms NAGE alleges if, among other things, Congress and the

President were to fail to suspend or raise the debt limit—the very course that the political branches have taken each time the government has approached or reached the debt limit in the past. NAGE provides no basis for concluding the government will depart from its consistent past practice and fail to timely raise or suspend the debt limit, with the significant adverse consequences that such a departure would produce.

The remaining cases that NAGE relies on are inapposite for the same reason: There is no reasonable likelihood that NAGE's alleged injuries are likely to occur (and indeed have never occurred before). For instance, in *Bayley's Campground, Inc. v. Mills*, 985 F.3d 153, 157 (1st Cir. 2021), this Court held that a challenge to a governor's executive order to quarantine during the COVID-19 pandemic was not moot under the voluntary-cessation exception, even though the executive order had been rescinded, because the governor could "unilaterally reimpose" the quarantine requirement in response to a spike in the virus. *Id.* at 157-58. The court also noted that a ruling that the case was moot could insulate from review an "overly broad executive emergency response, so long as it is iteratively imposed for only relatively brief periods of time." *Id.* at 158.

The situation in *Bayley's Campground* bears no resemblance to this case. The plaintiffs in *Bayley's Campground* challenged "an executive action that the [g]overnor voluntarily rescinded and could unilaterally reimpose." *Id.* at 157; *see also Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 20-21 (2020) (per curiam) (similar). Moreover, this Court recognized that there was a reasonable likelihood that the

governor would reimpose the quarantine requirement in the future due to a spike in the spread of the virus. *See Bayley's Campground*, 985 F.3d at 157; *see also Roman Catholic Diocese of Brooklyn*, 592 U.S. at 20 (concluding that the governor's decision to rescind a challenged classification did not moot the case because the governor "regularly changes the classification of particular areas without prior notice" and could do so in the future).

Neither is true here. The Fiscal Responsibility Act's suspension of the debt limit was not a unilateral executive action; nor could the President reimpose the debt limit following dismissal of NAGE's suit. And, as already discussed, there is no reasonable likelihood that the President and Congress will fail in the future to enact legislation suspending or raising the limit and will instead take the allegedly unconstitutional actions that NAGE fears.

As NAGE recognizes (Br. 30), in *Calvary Chapel of Bangor v. Mills*, 52 F.4th 40 (1st Cir. 2022), this Court held that the voluntary-cessation exception to mootness did not apply in the context of a different COVID-19 order by a governor, where the governor "changed course for reasons unrelated to the litigation," *id.* at 48; *accord Boston Bit Labs*, 11 F.4th at 10 (similar). This Court rejected the plaintiff's arguments that the suit was subject to the exception just because "the [g]overnor retains the authority to reinstate her restrictions at any time." *Calvary Chapel*, 52 F.4th at 49-50 (quotation marks omitted); *accord Boston Bit Labs*, 11 F.4th at 10 ("That the [g]overnor has the power to issue executive orders cannot itself be enough to skirt mootness,

because then no suit against the government would ever be moot."). This Court held that there was no reasonable likelihood that the restrictions would be reinstated, given that the governor had not attempted to reinstate them and had revoked the state of emergency declaration that had justified the restrictions initially. *See Calvary Chapel*, 52 F.4th at 49-50.

By a similar token, there is no reasonable likelihood that the government will engage in the unconstitutional conduct NAGE alleges here. The President and Congress have never engaged in the purportedly unconstitutional conduct of failing to raise or suspend the debt limit and reducing government spending in a way that harms NAGE's members. NAGE attempts to distinguish *Calvary Chapel* and *Boston Bit Labs* by arguing that the governors' orders in those COVID-19 cases were not likely to be reimposed and that in this case, the challenged restrictions "will automatically resume in a matter of months." Br. 31. But in this case, the allegedly unconstitutional conduct has never occurred, and NAGE has not plausibly alleged that the President and Congress will take the unprecedented steps that NAGE alleges would lead to such actions occurring in the future. And as in *Calvary Chapel* and *Boston Bit Labs*, the President and Congress took the action that mooted this case for reasons unrelated to the litigation. Thus, the voluntary-cessation exception does not apply.

3. For similar reasons, NAGE's claims are not subject to the narrow exception to mootness for conduct capable of repetition yet evading review. *See New England Reg'l Council of Carpenters v. Kinton*, 284 F.3d 9, 18 (1st Cir. 2002). "[A]voiding

mootness cannot merely rest on an alleged harm that is theoretically 'not impossible' of repetition." *Harris*, 43 F.4th at 194. The capable-of-repetition-yet-evading-review exception "'applies only in exceptional situations,' where a plaintiff can show that "'(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again.'"'" *American Civil Liberties Union of Mass.*, 705 F.3d at 57 (quotation marks omitted).

NAGE has not shown that either of these two prongs of the exception is satisfied here. First, NAGE cannot plausibly allege that the challenged unconstitutional conduct has occurred or will ever occur. *See* Dkt. No. 58 at 7. For the reasons already explained, NAGE has not plausibly alleged a "reasonable expectation or demonstrated probability that [it] will again be subjected to the alleged illegality." *Harris*, 43 F.4th at 195 (emphasis and quotation marks omitted).

Second, NAGE has not alleged that, even if the government took the extraordinary and unprecedented step of failing to raise or suspend the debt limit in time to avoid government default on its obligations, the duration of any impasse would be "too short to be fully litigated prior to its cessation or expiration." *American Civil Liberties Union of Mass.*, 705 F.3d at 57 (quotation marks omitted). Because the government has never failed to timely raise or suspend the debt limit, it is not possible to say how long an impasse would last in the event extraordinary measures are exhausted. For that reason, this case is not "among or closely analogous to the

'inherently transitory' claims that the Supreme Court has previously found to fit this exception." *Harris*, 43 F.4th at 194 (quoting *American Civil Liberties Union of Mass.*, 705 F.3d at 57 (collecting cases involving elections, pregnancies, and temporary restraining orders)). There is no precedent for the government becoming unable to meet its financial obligations, no precedent for the President reducing government spending or delaying paychecks if that occurs, and no precedent for Treasury not making the G Fund whole—so it is far from clear how much time there would be to address the kinds of challenges NAGE raises in its complaint. NAGE cannot claim an exception to mootness on the basis of speculation alone.

In addition, assuming this extended chain of contingencies occurred and caused NAGE members the economic losses that NAGE alleges, a subsequent claim for compensatory damages could prevent the case from becoming moot, even if injunctive and declaratory relief were no longer available. *See County Motors, Inc. v. General Motors Corp.,* 278 F.3d 40, 43 (1st Cir. 2002) ("[A] claim for damages may prevent a case from becoming moot where injunctive relief no longer presents a live controversy[.]"). Thus, even in the highly unlikely event that the allegedly unconstitutional conduct comes to pass, it is not the case that it would necessarily evade review.

The temporary suspension of the reinvestment of the G Fund balance likewise does not establish that the capable-of-repetition-yet-evading-review exception applies. *See* Br. 31. NAGE cannot plausibly allege that the Treasury Secretary would fail to

pay G Fund investors the amounts they seek to withdraw or comply with the statutory requirement to make the G Fund whole after the termination of the debt issuance suspension period. *See* 5 U.S.C. § 8438(g)(1)-(4). Thus, NAGE cannot establish a "demonstrated probability" that its members will be harmed by the declaration of a debt issuance suspension period in the future. *Harris*, 43 F.4th at 195 (quotation marks omitted).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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This brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B), because it contains 8,987 words. This brief also complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and 32(a)(6), because it was prepared using Word for Microsoft 365 in Garamond 14-point font, a proportionally spaced typeface.

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