No. 25-819

In the Supreme Court of the United States

JEANNE HEDGEPETH,

Petitioner,

v.

JAMES A. BRITTON, ET AL.,

Respondents.

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

BRIEF *AMICUS CURIAE* OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS[1]

Amicus Curiae, the American Center for Law and Justice ("ACLJ"), is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have appeared often before this Court as counsel for parties, *e.g.*, *Trump v. Anderson*, 601 U.S. 100 (2024); *McConnell v. FEC*, 540 U.S. 93 (2003); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993); or for amici, *e.g.*, *Trump v. United States*, 603 U.S. 593 (2024); *Trump v. Hawaii*, 585 U.S. 667 (2018); and *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571 (2017). The ACLJ has a strong interest in defending the free speech rights of American citizens. The ACLJ is particularly concerned here with protecting the rights of government employees against viewpoint discrimination via a *de facto* heckler's veto.

SUMMARY OF ARGUMENT

This case presents a recurring and important First Amendment question: whether community outrage over a public employee's privately expressed political views—without more—constitutes "disruption" sufficient to justify termination under *Pickering* and *Garcetti*. It does not.

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[1] Pursuant to Supreme Court Rules 37.2 and 37.6, amicus states that Counsel of record for the parties received timely notice of the intent to file this brief, no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

Jeanne Hedgepeth was fired not because her speech impaired classroom instruction, interfered with school operations, or undermined her ability to teach, but because her private social media posts provoked public controversy. The school district conceded that her speech did not disrupt instructional activities, that school was not in session when the posts appeared, and that the bulk of the complaints came from members of the general public rather than students or parents. Nonetheless, the Seventh Circuit treated emails, media attention, and public criticism as evidence of disruption. That ruling effectively converts public outrage into a veto over protected speech.

The *Pickering-Garcetti* framework permits restrictions on public-employee speech only where the government demonstrates, through evidence or a reasonable, fact-based prediction, that the speech threatens the efficient performance of public services. It does not allow the government to punish speech simply to avoid controversy, discomfort, or criticism. By equating outrage with disruption, the decision below abandons that framework and authorizes viewpoint discrimination whenever enough people object loudly enough.

This error is not isolated. Lower courts increasingly treat social-media amplification and public reaction as presumptive disruption, untethered from any showing that the government's actual functions were impaired. That approach invites a heckler's veto and chills public employees' participation in core political debate.

This Court should grant review to clarify that community outrage—whether expressed through

emails, petitions, media coverage, or social-media controversy—is not, without more, a cognizable disturbance under *Pickering* and *Garcetti*. The First Amendment protects controversial speech, not just speech that offends no one.

ARGUMENT

Jeanne Hedgepeth, a high school teacher with twenty years of experience at Palatine High School (PHS), posted political messages on her private Facebook page. Because of community complaints via email, media inquiries, public comment, and an organization's demand for Hedgepeth's firing, the school board fired her. It based its decision on receiving "135 emails and phone calls expressing concern or outrage," national media coverage of the situation, a petition from certain students, and speculation that the posts would hurt Hedgepeth's ability to relate and work with a diverse student body.[2] Outrage from the community ended Hegepeth's career. Outrage over a viewpoint expressed privately, not as a part of her duties at school, caused the school board to investigate and fire

[2] The Seventh Circuit's Memorandum Opinion bolstered this claim: "This was no hypothetical concern. PHS has a highly diverse student body composed of 5.3% Black, 46.1% Latino, 8.1% Asian, and 37.9% white students as of 2020." *Hedgepeth v. Britton*, 152 F.4th 789, 794 n.1 (7th Cir. 2025) . Yet simply listing the racial makeup of the school does not show that the claim is more than hypothetical. No other facts are alleged that indicate Hedgepeth's ability to work with minority students was in any way actually or hypothetically damaged. Hypothesizing that posts and media coverage would cause disruption in the classroom *is* pure guesswork on the facts presented.

her. This heckler's veto is inconsistent with the substantial disturbance standard required by this Court's decisions in *Pickering v. Bd. of Educ.*, 391 U.S. 563 (1968), and *Garcetti v. Ceballos*, 547 U.S. 410 (2006). This Court should clarify that community outrage over controversial speech is not a disturbance under *Pickering-Garcetti* to protect the free speech rights of government employees.

I. The *Pickering-Garcetti* Test is Designed to Ensure Government Employers Can Provide Public Services Efficiently, Not Prevent Controversy.

This Court's precedents emphasize that "public employees do not surrender all their First Amendment rights by reason of their employment." *Garcetti*, 547 U.S. at 417. Yes, speech on matters of public concern is subject to restriction, but only to restrictions that are "*necessary* for their employers to operate efficiently and effectively." *Id.* at 419 (emphasis added). Specifically, in the context of school teachers, this burden is not met when that speech has not been "shown nor can be presumed to have in any way either impeded the teacher's proper performance of [her] daily duties in the classroom or to have interfered with the regular operation of the schools generally." *Pickering*, 391 U.S. at 572-73. When the government employer cannot show this, the "interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public." *Id.* at 573. The Seventh Circuit acknowledges

that the speech rights of the employee must be balanced against the government employer's interest in "the proper performance of public functions." *Darlingh v. Maddaleni*, 142 F.4th 558, 565 (7th Cir. 2025) (citing *Pickering*).

To be restricted, speech must threaten or actually damage the public mission and function of the school in an evidentially demonstrable way. *See Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 508 (1969) (noting that "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression" in schools). Indeed, prediction of disturbance or harm must be "reasonable." It is not enough that "'some students and staff . . . were aware' of [Hegepeth's] posts or that 'students [were overheard] discussing her social media activity.'" *MacRae v. Mattos*, 145 S. Ct. 2617, 2620 (2025) (Thomas, J., concurring in denial of certiorari). There must be actual disruption or a "reasonable prediction[] of disruption." *Id.*

Indeed, the nature of the employment informs whether there is a disturbance, indicating a requirement to tie the disturbance to the actual government service offered. In the context of other government employers, more deference is given to the employer's prediction of disturbance based on the nature of the mission. For example, "[i]t has been recognized that a police department has a more significant interest than the typical government employer in regulating the speech activities of its employees in order 'to promote efficiency, foster loyalty and obedience to superior officers, maintain morale, and instill public confidence.'" *Kokkinis v. Ivkovich*, 185 F.3d 840, 845 (7th Cir. 1999) (quoting

Shands v. City of Kennett, 993 F.2d 1337, 1344 (8th Cir. 1993)). Yet even with increased deference, courts have held restrictions on controversial speech unconstitutional when the evidence presented is merely "generalized allegations of budding 'divisiveness' . . . ." *Liverman v. City of Petersburg*, 844 F.3d 400, 408 (4th Cir. 2016) (internal quotations omitted).

In *Liverman*, an officer was fired after violating department speech policy that restricted any controversial speech, but the policy was held unconstitutional even though the "officers' social media use might present some potential for division within the ranks, particularly given the broad audience on Facebook." *Id.* The department policy targeted "speculative ills" like "divisiveness," but no evidence was shown of "material" disruption. *Id.* at 408-09. Because this decision regarded a broad regulation, not a classic *Pickering-Garcetti* issue of case-by-case restriction, the government was required to show *actua*l disruption. *Id.* at 407-08.

Whether the restriction takes the form of a general policy or a case-specific disciplinary action, the government is still seeking to suppress speech because others react negatively to it. Allowing speech to be curtailed simply because it generates controversy misunderstands the *Pickering–Garcetti* balancing test. That test requires more than discomfort or disagreement: the government employer must show that the speech either caused actual disruption to the functioning of the government entity or that the employer reasonably predicted such disruption to its operations. *MacRae v.*

Mattos, 106 F.4th 122, 138 (1st Cir. 2024), *cert. denied MacRae v. Mattos*, 145 S. Ct. 2617 (2025)).

Indeed, the court of origin in this case observed that "[s]pecial consideration is given in the context of school-employee speech by virtue of the position of trust that a teacher in a public school occupies." *Hedgepeth v. Britton*, No. 21 CV 3790, 2024 U.S. Dist. LEXIS 28510, at *18 (N.D. Ill. Feb. 20, 2024) [hereinafter *Hedgepeth I*].

However, the Seventh Circuit below misapplied the *Pickering-Garcetti* framework by treating evidence of public outrage as proof of disruption to government services, rather than requiring evidence that classrooms or teaching were actually disrupted. The nature of this disruption should be specific to a teacher in a public school. The teacher's speech must not, "nor can [it] be presumed to have in any way either impeded the teacher's proper performance of [her] daily duties in the classroom or to have interfered with the regular operation of the schools generally." *Pickering*, 391 U.S. at 572-73. While it is still true that *actual* disruption need not be shown, there must be a rational relationship to actual disruption of a government function. If a harm is alleged, there must be a connection to loss of efficiency, and disruption to the government service offered. *See Garcetti*, 547 U.S. at 419. The government's interest is the "proper performance of its public functions." *Darlingh*, 142 F.4th at 565 (citing *Pickering*). The disruption alleged or predicted by the government must reasonably relate to the functions it serves, and not merely the avoidance of controversy. Additionally, predicted disruption must be "supported by specific evidence." *Brown v. City of*

Tulsa, 124 F.4th 1251, 1268 (10th Cir. 2025) (internal quotation omitted). That was not the case here.

Courts like the Seventh Circuit below have expanded the focus of *Pickering-Garcetti*. *See, e.g.*, *MacRae*, 106 F.4th at 122 (finding "uncontroverted evidence of disruption" in reports of upset students, discussion of the controversy in school board meetings, and an education association's pledge to release a public statement). Under those decisions, government employers may point to a chorus of ideological opposition as proof of disruption and use it to justify firing the speaker. Treating public outcry as a substitute for actual disruption runs counter to foundational First Amendment principles and should be corrected by this Court.

II. Community Outrage Over a Social Media Post is not Disturbance.

There has been an uptick in discipline of government employees for controversial posts on social media. Controversial opinions are punished with firing or other discipline. With the spread of social media and the nature of the controversy and broad reach it generates, this Court should clarify that outrage and controversy, even on the scale made possible by social media, are not, on their own, enough to show disruption of public services.

It is axiomatic that government speech regulation based on content or viewpoint is presumptively unconstitutional. To determine whether a regulation is content based, a court must "consider whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys." *Reed v.*

Town of Gilbert, 576 U.S. 155, 163 (2015) (citing *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 564 (2011)). Additionally, the government cannot regulate speech "because of disagreement with the message [the speech] conveys," *Ward v. Rock Against Racism*, 491 U. S. 781, 791 (1989). There should be no difference if the government regulates speech because of community outrage. *See Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180, 206 (2021) (Alito, J., & Gorsuch, J., concurring) ("[E]ven if such speech is deeply offensive to members of the school community and may cause a disruption, the school cannot punish the student who spoke out; 'that would be a heckler's veto.'"); *MacRae*, 145 S. Ct. at 2621 (Thomas, J., concurring with denial of certiorari) ("But, the *Pickering-Garcetti* framework plainly forbids using 'the guise of protecting administrative interests' to 'disfavor any particular view.'").

In the context of schools and maintaining an effective educational environment, this Court has stated that "for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." *Tinker*, 393 U.S. at 509. In the context of student speech, this Court has made clear that lower morale does not indicate a disruption. For instance, a school could not suspend a student "based on the fact that there was negativity put out there that could impact students in the school." *Mahanoy Area Sch. Dist.*, 594 U.S. at 193, (finding no evidence of "substantial disruption" when there was "discussion

of the matter [that] took, at most, 5 to 10 minutes of an Algebra class 'for just a couple of days' and [] some members of the cheerleading team were 'upset about the content of [the student's] Snapchats." *Id.* at 192). There is no reason that the requirement for educational disturbance should change based on whether a teacher is speaking instead of a student. If there is disturbance, there is disturbance.

Even with predicted disruption, the government must back its prediction with specific evidence that rationally relates to the public services provided. *See Melton v. City of Forrest City*, 147 F.4th 896, 903 (8th Cir. 2025) (explaining that evidence that a "firestorm" of controversy was not actual disruption when the government did not show disruption to the main functions of the fire department, "there was no disruption of training at the fire department, or of any fire service calls, because of the post or the controversy surrounding it."). "Enough outsider complaints could prevent government employees from speaking on any controversial subject, even on their own personal time. And all without a showing of how it actually affected the government's ability to deliver 'public services'—here, fighting fires and protecting public safety." *Id.* (internal citations omitted). The disruption should be tailored to the public service, and this Court should prevent public employers from caving to a heckler's veto of outrage or "using 'the guise of protecting administrative interests' to 'disfavor any particular view.'" *MacRae*, 145 S. Ct. at 2621 (Thomas, J., concurring on denial of certiorari). Consistent with the governmental interests outlined by this Court's precedent, *Pickering-Garcetti* should require the government to show or predict, with

evidence, actual disruption to the education of students. Social media outrage and the comfort of students should not be enough to curtail private speech on issues of political importance. *See Hedgepeth I,* 2024 U.S. Dist. LEXIS 28510 at *18. (stating that Hedgepeth's speech "clearly touched on a matter of public concern—political unrest and race in the wake of police violence.").

III. The Court Below Incorrectly Assumed that Social Media Use Weighed in the Government's Favor When Evaluating Disruption.

A *de facto* heckler's veto is unconstitutional. When a government institution implicitly adopts the viewpoint of an outraged crowd, it "undermines core First Amendment values" as it allows "a government employer to adopt an institutional viewpoint on the issues of the day and then, when faced with a dissenting employee, portray this disagreement as evidence of disruption." *MacRae*, 145 S. Ct. at 2620 (Thomas, J., concurring in denial of certiorari). And the factor of social media use should be relevant only insofar as it relates to actual disruption, not an automatic weight in the government's favor.

But the district court in this case endorsed a view that the very fact something was posted on social media meant the speech had "a risk of amplification," and therefore favored the government. *Hedgepeth v. Britton*, 152 F.4th 789, 798 (7th Cir. 2025) [hereinafter *Hedgepeth II*]. Social media, it said, "increases the potential, in some cases exponentially, for departmental disruption, thereby favoring the

employer's interest in efficiency." *Id.* (quoting *Liverman*, 844 F.3d at 407). This is misguided. Assuming that there is a "greater risk for amplification," it does not follow that a disturbance is more likely. More facts are needed. An "increase in potential" for disruption is not itself disruption and should not weigh in the government's favor absent more evidence. This effectively gives government employers the ability to look at community outrage and, rather than accept the controversy that constitutionally protected speech brings, claim disruption with added deference to their opinion.

Additionally, the evidence relied upon comes up short. The court below admitted that Hedgepeth's statements had constitutional value as she spoke on a matter of public concern. *Id.* at 795. The district court admitted that since the posts were made outside of the office, on her own time, on a profile not identified with the school district, it "may" be less disruptive. *Id.* at 798. As Petitioner explains,

> The court did not dispute that the majority of complaints came from members of the general public, not current students, parents, or teachers. And it took no issue with the district's concession that Hedgepeth's "speech did not disrupt classroom or instructional activities or after-school or extracurricular activities" since "school was not in session," or with the statistics that Hedgepeth relied on in her posts (which the district never bothered to check). Nevertheless, the court claimed

> that the complaints and media attention generated by opposition to Hedgepeth's speech constituted sufficient "disruption" to override her First Amendment rights.

Brief for Petitioner at 20 (internal citations omitted). What the evidence shows is the opposite of what the district court stated. Rather than making classroom disruption more likely, social media made public outrage and media attention more likely. With the outside attention, the danger of the heckler's veto increases, not decreases.

Nevertheless, the community outrage experienced by the school district was considered actual disruption by the Seventh Circuit. By yielding to the viewpoint of those outraged by Hedgepeth's speech, the Seventh Circuit blessed the school district's discrimination against Hedgepeth's viewpoint without a finding of actual—or fact-supported prediction of—disruption of the school's public functions.

The "evidence" showed no injury to the school's mission of education. By the time the school district voted to dismiss Hedgepeth, the district had received 113 emails about her posts. In all the "evidence" presented, actual disruption and safety were not mentioned. What was mentioned was the "concern or outrage about [Plaintiff's] posts[]" and media coverage the posts received. *Hedgepeth II*, 152 F.4th at 794. The Seventh Circuit stated that it "stress[ed] that [predictions of coming disruption] must be reasonable, meaning that they are 'supported with an evidentiary foundation and [are] more than mere

speculation[]'" and that "[t]he level of disruption needed to justify a restriction varies with context." *Id.* at 796. But the only harm mentioned in this case is when the district "apologiz[ed] 'for any harm or disrespect that this may have caused.'" *Id.* at 793. The only identified "disruption" was people, mostly those with little connection to the high school, voicing their displeasure. Brief for Petitioner at 20. Many of the emails sent to the school were based on a template that appeared to be part of an organized effort from a local activist. Brief for Petitioner at 9. This was a fact conceded by the Northern District of Illinois. *Hedgepeth I* 2024 U.S. Dist. LEXIS 28510 at *4 n.4 (N.D. Ill. Feb. 20, 2024). ("I accept for purposes of summary judgment an inference in Hedgepeth's favor that some communications were supportive of her, some emails were based on template forms, and many communications were submitted by members of the public rather than students and parents.").

The Seventh Circuit declined to comment on whether any of the presented evidence affected "the proper performance of its public functions," other than the mention of a "costly and time-consuming public relations response." *Hedgepeth II*, 152 F.4th at 797; *see Darlingh*, 142 F.4th at 565. In so doing, it overlooked a critical component of the analysis. Did this public relations issue affect education? Did this cause classroom instruction to suffer or the school to spend over budget? Did it impair Ms. Hedgepeth from competently performing her duties as an educator? There is no factual basis in the record to tie this speculation to *any* disruption in the school's ability to effectively educate, or in Hedgepeth's ability to function effectively in the classroom. "Unsettling

classrooms" can be the effect of controversial speech, but again, the district admitted that Hedgepeth's "'speech did not disrupt classroom or instructional activities or after-school or extracurricular activities' since 'school was not in session[.]" Brief for Petitioner at 13.

On top of its forecasting no threat of future disruption or harm, there was also no present disruption to the functioning of the school from Petitioner's Facebook posts that would negate her First Amendment rights. What "threw school and district operations into disarray and unsettled [Petitioner's] colleagues' classrooms[]" were "complaints from current PHS students and alumni, another teacher, and a parent," as well as "emails, calls, and media inquiries (both local and international) regarding [Petitioner's] post[,]" due to which the District then "promptly issued a press release[.]" *Hedgepeth II*, 152 F.4th at 797, 793. It also referenced two public meetings held by the school board that included public comments, the first featuring "at least 58 public comments on [Petitioner's] Facebook posts, most critical and a handful in support." *Id.* at 793-94. The second had speakers mostly speaking critically about Petitioner. *Id.*

As discussed *supra*, Part I, these kinds of reactions to controversial speech do not disruption make. There is no indication that any educational function was harmed. In fact, the opposite was admitted by the district. Brief for Petitioner at 13. If this sort of "disruption" is allowed to curtail the speech rights of government employees speaking in a private capacity on issues of great public concern, then the heckler's

veto is in full effect. Discussion of the controversy in class, absent concrete harm to the school's function, is not disruption that meets the standard of *Pickering-Garcetti*.

Pickering-Garcetti should protect, not punish, controversial political opinions. And this is not a theoretical worry. In *Dodge v. Evergreen School District*, 56 F.4th 767, 773-74 (2022), a teacher was approached and scolded by his principal for simply bringing (not wearing) a Make America Great Again hat to teacher trainings. The teacher merely "placed his hat either on the table in front of him or on top of his backpack[]." *Id.* at 773. The teacher brought it a second day, again wearing the hat before entering the school building and taking it off once inside. *Id.* at 774. The teacher was told that the hat was considered "a symbol of hate and bigotry" for some individuals and that it upset some teachers during training; one teacher cried, another found it "threatening[,]" and another said, "she felt intimidated and traumatized." *Id.* at 773-74.

However, the Ninth Circuit faithfully interpreted the *Pickering-Garcetti* framework and explained "[t]hat some may not like the political message being conveyed . . . cannot itself be a basis for finding disruption of a kind that outweighs the speaker's First Amendment rights. Therefore, [the] asserted administrative interest in preventing disruption among staff [did] not outweigh [plaintiff's] right to free speech." *Id.* at 783. Additionally, the "evidence that teachers and staff felt '"intimidated,' 'shock[ed],' 'upset,' 'angry,' 'scared,' 'frustrated,' and 'didn't feel safe"' still did not satisfy the *Pickering-Garcetti* standard of disruption. *Id.* at 782. The court still

found no evidence that the plaintiff's hat "'interfered with h[is] ability to perform h[is] job or the regular operation' of the school . . . or that its presence injured any of the school's legitimate interests 'beyond the "disruption that necessarily accompanies" [controversial] speech[.]" *Id.* at 782 (citations omitted). The disruption that accompanies controversial speech is an expected outcome of our system of free speech, and that alone cannot justify restriction. That same standard should have applied to Hedgepeth. The controversy and fallout from her private speech on a controversial topic should not be used as the justification to silence her.

If a message's viewpoint causes the outrage, and that outrage causes the government employer to punish the speech, it is because of the viewpoint that the speech is punished. If a school fires an educator because of community outrage, it shows that community outrage can control the private speech of government employees. This was never meant to be the outcome of *Pickering-Garcetti*. Here, the Court has an opportunity to clarify the standard for the Circuits and strike the right balance between effective operation and employee speech.

CONCLUSION

This Court should grant the petition and reverse.

Respectfully submitted,

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