

No. 25-819

IN THE
Supreme Court of the United States

JEANNE HEDGEPEETH,

Petitioner,

v.

JAMES A. BRITTON, et al.,

Respondent.

On Petition for a Writ of Certiorari to the
U.S. Court of Appeals for the Seventh Circuit

**Brief of the Liberty Justice Center as *Amicus*
Curiae in Support of Petitioner**

Jeffrey M. Schwab
Counsel of Record
James J. McQuaid
LIBERTY JUSTICE CENTER
7500 Rialto Blvd
Suite 1-250
Austin, TX 78735
jschwab@ljc.org

March 11, 2026

Question Presented

Whether and in what circumstances public employers may discipline employees based on their expression of controversial views while off the job.

Table of Contents

Question Presented i

Table of Authorities..... iii

Interest of the Amicus Curiae.....1

Summary of Argument.....1

Argument1

 I. *Garcetti* must not be expanded, especially now when Americans are more stridently policing each other’s speech.....3

 II. The government speech doctrine has an obvious limit: *Garcetti*, and no further.....6

 III. Free speech cannot be subject to overrule by the mob.....8

Conclusion10

Table of Authorities

Cases

<i>Balogh v. Virginia</i> , 120 F.4th 127 (4th Cir. 2024)	9
<i>Garcetti v. Ceballos</i> , 547 U.S. 410 (2006).....	1, 2, 3, 5
<i>Kennedy v. Bremerton Sch. Dist.</i> , 139 S. Ct. 634 (2019).....	10
<i>Keyishian v. Board of Regents</i> , 385 U.S. 589 (1967).....	2
<i>Pickering v. Bd. of Educ.</i> , 391 U.S. 653 (1968).....	1, 2
<i>Shelton v. Tucker</i> , 364 U.S. 479 (1960).....	2
<i>Street v. New York</i> , 394 U.S. 576 (1969).....	8
<i>Terminiello v. Chicago</i> , 337 U.S. 1 (1949).....	8, 9, 10
<i>Texas v. Johnson</i> , 491 U.S. 397 (1989).....	9
<i>Tinker v. Des Moines Indep. Cmty. Sch. Dist.</i> , 393 U.S. 503 (1969).....	1
<i>Wieman v. Updegraff</i> , 344 U.S. 183 (1952).....	2

Other Authorities

Ariane de Vogue, <i>Ginsburg likes S. Africa as Model for Egypt</i> , ABC News (Feb. 3, 2012).....	7
--	---

Danielle Kurtzleben, <i>When Republicans Attack 'Cancel Culture,' What Does It Mean?'</i> NPR (Feb. 10, 2021, 5:00 A.M.)	3
Devan Cole, <i>Newsom and other Democratic leaders seen maskless at Rams game despite LA restrictions</i> , CNN (Jan. 31, 2022, 5:25 P.M.)	7
John Diaz, <i>Pelosi's black-market blowout</i> , SF Chronicle (Sep. 3, 2020, 6:22 A.M.)	7
<i>Reagan jokes about bombing Russia</i> , History	6
Travis Pittman, <i>Fauci calls criticism over photo of him with mask down 'mischievous'</i> , WUSA9 (July 24, 2020, 10:19 P.M.)	7
Yascha Mounk, <i>Stop Firing the Innocent</i> , The Atlantic (June 27, 2020)	3

Interest of the Amicus Curiae¹

The Liberty Justice Center is a nonprofit, nonpartisan public-interest litigation firm that pursues strategic, precedent-setting litigation aimed at revitalizing constitutional restraints on government power and protecting individual rights.

The Liberty Justice Center is interested in this case because it frequently litigates important cases that seek to protect the First Amendment rights of government employees outside the workplace, including *Thorne v. Shelby County Bd. of Educ.*, No. 2:21-cv-02110 (W.D. Tenn.), *Foley v. MassHealth*, No. 2182CV00678 (Mass. Superior Ct.), and *Cubin v. Gordon*, No. 1-24-cv-164 (D. Wy.).

Summary of Argument

Citizens do not shed their First Amendment rights at their employer's door, even when the employer is the government. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). “[A] citizen who works for the government is nonetheless a citizen.” *Garcetti v. Ceballos*, 547 U.S. 410, 419 (2006). This question should have been settled in *Pickering v. Bd. of Educ.*, 391 U.S. 653 (1968), but *Garcetti* opened the door to the government speech doctrine, which now threatens to hold that all speech by any government

¹ Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amicus funded its preparation or submission. Counsel for Petitioner and Respondent received timely notice of *Amicus's* intent to file this brief.

employee at any time—even while off the job—is official government speech that does not have the protection of the First Amendment. With the advent of “cancel culture,” it is now more important than ever to cabin the government speech doctrine and override the heckler’s veto, before they are used to strip teachers and other state employees of all protection.

Argument

This case is one of several where a government employer attempts to frame all employee speech on any topic at any time as government speech to avoid First Amendment scrutiny.

The idea that government employees “may constitutionally be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest in connection with [the setting] in which they work” is based on “a premise that has been unequivocally rejected in numerous prior decisions of this Court.” *Pickering*, 391 U.S. at 568, citing *Wieman v. Updegraff*, 344 U.S. 183 (1952); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967).

Garcetti, on the other hand, held that “when employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes.” 547 U.S. at 421. The government employee in that case “did not act as a citizen when he went about conducting his daily professional activities, such as supervising attorneys, investigating charges, and preparing filings When he went to work and performed the tasks he was paid to perform, [he] acted as a government employee.” *Id.* at

422. The *Garcetti* Court explicitly said that it was addressing an “anomaly” that was “limited in scope,” “relat[ing] only to the expressions an employee makes pursuant to his or her official responsibilities, not to statements or complaints . . . that are made outside the duties of employment.” *Id.* at 424. *Garcetti* must not be expanded beyond that limited scope.

I. *Garcetti* must not be expanded, especially now when Americans are more stridently policing each other’s speech.

The timing for a clear protection of off-the-job speech cannot be more urgent, thanks to the rise of “cancel culture,” which used to simply mean a “cultural boycott,” but now means “online mobs shutting down speech” by pressuring the employers of disfavored speakers to punish unwanted speech by firing them. Danielle Kurtzleben, *When Republicans Attack ‘Cancel Culture,’ What Does It Mean?* NPR (Feb. 10, 2021, 5:00 A.M.).²

These internet lynch mobs have cost non-public figures their careers, be they a Latino utility worker who innocuously copied an “okay” hand gesture, an election data analyst who made an untimely observation that race riots decrease the Democratic vote share, or a Middle Eastern immigrant whose daughter had made racist posts on social media as a teenager. Yascha Mounk, *Stop Firing the Innocent*, *The Atlantic* (June 27, 2020).³ Employers are bullied into

² available at <https://www.npr.org/2021/02/10/965815679/is-cancel-culture-the-future-of-the-gop>.

³ available at <https://www.theatlantic.com/ideas/archive/2020/06/stop-firing-innocent/613615/>.

firing their “thought-criminal” employees lest those employees’ (usually off-the-job) speech be attributed to their employer. When that employer is the government, any extension of *Garcetti* would be particularly invidious.

Over the last few years, *Amicus* Liberty Justice Center has represented several government employees who were punished for speech outside their employment in violation of their First Amendment rights. Denise Foley was a former Director of Internal and External Training and Communication at MassHealth, a Massachusetts state agency, and received glowing performance reviews and citations. Her duties did not require her to communicate with the general public. Nevertheless, she was abruptly terminated for posting in a Facebook group a comparison of turning in people for not wearing masks to Nazi Germany. She did not discourage people from wearing masks in her social media posts and even stated that she wore one. For this, she lost her livelihood. *Foley v. MassHealth*, No. 2182CV00678 (Mass. Superior Ct.)

Similarly, Barton Thorne, the principal of Cordova High School, a public high school in Tennessee, was placed on administrative leave because he delivered a message to his students about the importance of free speech in a democratic society on January 11, 2021, one week after the riot at the Capitol. Principal Thorne stated at the beginning of his remarks that he does not get into politics with his students, that he wanted his students to go to their parents when they had questions about their values and their politics, and that his remarks were not about the Capitol riot

but rather the ability of private social media companies “to filter and to decide what you can hear and know about.” Transcript at 1, Dkt. 10-1, *Thorne v. Shelby County Bd. of Educ.*, No. 2:21-cv-02110 (W.D. Tenn.).

And Dr. Frederick Cubin, was fired from the Wyoming Board of Medicine after sending the Wyoming House of Representatives an email expressing his personal support for a law that prohibits gender-affirming procedures for minors. Even though he framed his comments “from the perspective of a Wyoming doctor who . . . practices medicine” and did not purport to speak on behalf of the Board of Medicine, his position on the Board was terminated. Principal Br. at 5, Dkt. 13, *Cubin v. Gordon*, No. 25-8021 (10th Cir.).

These three individuals, like Petitioner Jeanne Hedgepeth, are or were government employees whose speech was not “pursuant to their official duties.” *Garcetti*, 547 U.S. at 421. Jeanne Hedgepeth’s official duty is to teach social studies in the classroom, not via a Facebook page only viewable by her friends—and it was her longstanding practice to decline “friend” requests from current students. Pet. 6. Denise Foley’s official duties were to communicate policy to a state agency’s employees and external affiliates, not to advise the public on mask policies. Principal Thorne is a principal; while he did address his students at school, it is not his job to teach them about American civics. (And in his case, many of his colleagues engaged in similar speech without repercussion; it was perfectly fine for many of Principal Thorne’s co-workers to express their support for causes such as Deferred Action for Childhood Arrivals (DACA) and Pride Month and

their disdain for causes and individuals such as President Trump and former Secretary of Education Betsy DeVos. The Wyoming Board of Medicine issues and renews medical licenses, and Dr. Cubin’s comments were not on that topic.

Nevertheless, all four lost or are in danger of losing their jobs thanks to an expanded reading of *Garcetti*—one that this Court should shut down.

II. The government speech doctrine has an obvious limit: *Garcetti*, and no further.

If *Garcetti* was consistently extended in this way all speech by any public employee would be deemed government speech regardless of where and when that speech was made, regardless of whether that speech was made on the job or in private.

Consider the implications of the following instances of what is clearly not government speech being treated as government speech:

In 1984, then-President Reagan made an off-the-cuff joke about bombing Russia during a microphone test. *Reagan jokes about bombing Russia*, History.⁴ He was the sitting president, and he was moments away from delivering a radio address as part of his official duties, but this was obviously not official government speech.

In 2012, then-Justice Ruth Bader Ginsburg gave an interview in which she stated “I would not look to the U.S. Constitution, if I were drafting a Constitution

⁴ <https://www.history.com/this-day-in-history/reagan-jokes-about-bombing-russia> (last visited Mar. 10, 2026).

in the year 2012. I might look at the Constitution of South Africa.” Ariane de Vogue, *Ginsburg likes S. Africa as Model for Egypt*, ABC News (Feb. 3, 2012).⁵ No-one could seriously interpret this as an official pronouncement by the judicial branch that the South African constitution was superior to ours.

Throughout the COVID-19 pandemic, numerous elected politicians and health officials were caught violating mitigation measures they had publicly supported. *See, e.g.*, Travis Pittman, *Fauci calls criticism over photo of him with mask down ‘mischievous’*, WUSA9 (July 24, 2020, 10:19 P.M.)⁶ (Dr. Anthony Fauci); John Diaz, *Pelosi’s black-market blowout*, SF Chronicle (Sep. 3, 2020, 6:22 A.M.)⁷ (House Speaker Nancy Pelosi); Devan Cole, *Newsom and other Democratic leaders seen maskless at Rams game despite LA restrictions*, CNN (Jan. 31, 2022, 5:25 P.M.)⁸ (California Governor Gavin Newsom, Los Angeles Mayor Eric Garcetti, and San Francisco Mayor London Breed). These acts certainly sent a message that COVID restrictions could and should be ignored (at least by the

⁵ available at <https://abcnews.go.com/blogs/politics/2012/02/ginsburg-likes-s-africa-as-model-for-egypt>.

⁶ available at <https://www.wusa9.com/article/news/health/coronavirus/anthony-fauci-face-mask-down-photo-coronavirus/507-e33379cb-d79e-479b-9960-13293c96572f>.

⁷ available at <https://www.sfchronicle.com/opinion/article/Pelosi-blows-it-with-black-market-blowout-15539000.php>.

⁸ available at <https://www.cnn.com/2022/01/31/politics/gavin-newsom-eric-garcetti-london-breed-maskless-rams-game/index.html>.

elite); but did anyone seriously mistake them for official government expression?

These are clear instances of non-government speech by *very high-ranking* government figures. If not every pronouncement by the President or a Supreme Court Justice counts as government speech—if the Pope can speak *ex cathedra*—then clearly lower level government employees cannot be so restricted either.

Speech by government employees outside of, and unrelated to, their job duties—like that of Petitioner and Liberty Justice Center’s clients—is clearly not government speech and should be protected by the First Amendment. *Garcetti* is inapposite and must not be expanded.

III. Free speech cannot be subject to overrule by the mob.

“The vitality of civil and political institutions in our society depends on free discussion.” *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949). “The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.” *Id.* This diversity of ideas in free discussion must necessarily include discussion of controversial and uncomfortable topics. “[T]he public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.” *Street v. New York*, 394 U.S. 576, 592 (1969). “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414

(1989). To put it another way, “a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.” *Terminiello*, 337 U.S. at 4. Letting the mob shout down disfavored speakers—the heckler’s veto—is antithetical to that principle.

Here we have the quintessential elements of the heckler’s veto: “(1) a peaceful speaker; (2) a hostile crowd; and (3) a state actor that ‘cuts off’ only the peaceful speaker because of the crowd’s reaction to their speech.” *Balogh v. Virginia*, 120 F.4th 127, 136 (4th Cir. 2024). The speech at issue may be “disrespectful, demeaning, dismissive of other viewpoints, and racist,” App. 95, but that does not “produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.” *Terminiello*, 337 U.S. at 4, citing *Bridges v. California*, 314 U.S. 252, 262 (1941); *Craig v. Harney*, 331 U.S. 367, 373 (1947).

And denying government employees nearly all First Amendment protection for their off-duty speech would empower the heckler’s veto to such an extent that it would effectively bar them from expressing any controversial or unpopular opinions. Such a standard would allow public outcry to dictate which private views are permissible, silencing government workers whenever their personal beliefs provoke a negative reaction.

By firing Hedgepeth, the school district is attempting the very sort of “standardization of ideas . . . by . . .

dominant political or community groups” that is expressly foreclosed by the Constitution. *Terminiello*, 337 U.S. at 4–5.

Conclusion

“This Court certainly has never read *Garcetti* to go” so far as to hold that public employees “may be fired if they engage in any expression that [their employer] does not like . . . from the moment they report for work to the moment they depart.” *Kennedy v. Bremerton Sch. Dist.*, 139 S. Ct. 634, 636 (2019) (statement of Alito, J.). It should not do so now. This Court should affirmatively state that *Garcetti* means what it says, and nothing further: speech by government employees outside the scope of their official duties, no matter how unpleasant or controversial, is *never* government speech and is *always* protected by the First Amendment.

March 11, 2026

Respectfully submitted,

Jeffrey M. Schwab
Counsel of Record
James J. McQuaid
LIBERTY JUSTICE CENTER
75000 Rialto Blvd. Suite 1-250
Austin, TX 78735
512-481-4400
jschwab@ljc.org

Counsel for Amicus Curiae