IN THE
SUPREME COURT OF THE UNITED STATES

No. ___

JEANNE HEDGEPETH,
Applicant,

v.

JAMES A. BRITTON, et al.,
Respondents.

APPLICATION TO THE HON. AMY CONEY BARRETT FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rule 13.5, Applicant Jeanne Hedgepeth hereby moves for a 45-day extension of time, to and including January 8, 2026, to file her petition for certiorari in this Court. Unless an extension is granted, the deadline for filing the petition for certiorari will be November 24, 2025.

In support of this request, Petitioner states as follows:

1. The United States Court of Appeals for the Seventh Circuit rendered its decision on August 26, 2025 (Exhibit A). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case concerns the First Amendment right of public employees to engage in core political speech while off the job. Applicant Jeanne Hedgepeth was a high school teacher at Palatine High School in Illinois. While on summer vacation in Florida, she posted several comments on her private Facebook page criticizing political unrest following the death of George Floyd. Palatine fired Hedgepeth after administrators deemed her posts "disrespectful, demeaning of other viewpoints, and racist." DCt.Dkt.69 at 32.

3. Applicant sued under 42 U.S.C. §1983, alleging that her termination violated the First Amendment. The district court granted summary judgment to Respondents. The Seventh Circuit affirmed, holding that the First Amendment does not bar the government from firing Petitioner for engaging in core political speech on a private Facebook page while on summer vacation. Invoking the balancing test set forth in *Pickering v. Board of Education*, 391 U.S. 563 (1968), the court held that the school's interest in "avoiding disruption"—specifically, emails and phone calls from members of the public (most of whom had no direct connection to the school) "expressing concern or outrage" about Hedgepeth's views—"outweighs her right to speak." Ex.A at 5, 13.

4. The Seventh Circuit's decision is deeply flawed, undervalues free speech, and conflicts with decisions from other courts of appeals, which have held that "public employers do not have a free hand to engage in viewpoint discrimination toward their employees." *Amalgamated Transit Union Local 85 v. Port Auth. of Allegheny Cnty.*, 39 F.4th 95, 109 (3d Cir. 2022). And left standing, the Seventh Circuit's decision is a

profound threat to the First Amendment. Nothing in this Court's cases supports the proposition that public employers can engage in blatant viewpoint discrimination simply because some in (or far outside) the workplace disagree with an employee's viewpoint. *See MacRae v. Mattos*, 145 S.Ct. 2617 (2025) (Thomas, J., statement respecting denial of certiorari); *Rankin v. McPherson*, 483 U.S. 378, 385-87 (1987). To the contrary, this Court has repeatedly rejected the notion—including in the public high school employee setting—that protected speech must "give way to a 'heckler's veto.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022). It could hardly be otherwise, as "above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 95 (1972).

5. The Seventh Circuit badly misapplied *Pickering*. But if *Pickering* really permits firing public employees because they express controversial views while off the job clock, then *Pickering* should be overruled or narrowed. Indeed, the balancing approach that this Court sanctioned in *Pickering* has always been difficult to square with bedrock First Amendment principles. This Court has rejected as "startling and dangerous" the notion that courts may engage in "an ad hoc balancing of relative social costs and benefits" of speech. *United States v. Stevens*, 559 U.S. 460, 470 (2010). Yet *Pickering* requires courts to engage in the impossible exercise of "compar[ing] incomparable interests." *Bennett v. Metro. Gov't of Nash. & Davidson Cnty.*, 977 F.3d 530, 553 (6th Cir. 2020) (Murphy, J., concurring). While "[s]peech on matters of public concern is at the heart of the First Amendment's protection," *Snyder v. Phelps*,

562 U.S. 443, 451-52 (2011) (alteration omitted), under the Seventh Circuit's understanding of *Pickering*, such speech is most likely to cause "disruption." And while the First Amendment demands clarity about what speech is prohibited, *Pickering* engenders uncertainty. Because *Pickering* requires courts to compare incommensurate interests, determinations about what speech is too disruptive for a particular government setting is bound to be in the eye of the beholder. *Bennett*, 977 F.3d at 553 (Murphy, J., concurring). *Pickering*'s opaque test has an "obvious chilling effect on free speech." *Reno v. ACLU*, 521 U.S. 844, 871-72 (1997).

6. Applicant's counsel, Paul D. Clement, was not involved in the proceedings below and requires additional time to prepare a petition that fully addresses the important issues raised by the decision below in a manner that will be most helpful to the Court. Mr. Clement has substantial argument obligations between now and November 24, 2025. He is scheduled to present oral argument in the Ninth Circuit in *Media Matters for America v. X Corp.*, No. 25-2463 (9th Cir.), on November 17, and *State of Connecticut v. 3M Company*, No. 25-11 (2d Cir.), on November 20. Mr. Clement also has substantial briefing obligations, including an opening brief in *Bodin v. City of New Orleans*, No. 25-30524 (5th Cir.), due November 12, an opening brief in *United States v. Pramaggiore*, No. 25-2349 (7th Cir.), due November 14, an answering brief in *Petersen Energia Inversora, S.A.U. v. Argentine Republic*, No. 25-1687 (2d Cir.), due November 16, and an opening brief in *Montgomery v. Caribe Transport II, LLC*, No. 24-1238 (U.S.), due November 17. Applicant's counsel thus requests a modest extension.

7. Respondents' counsel does not consent to an extension.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including January 8, 2026, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted.

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